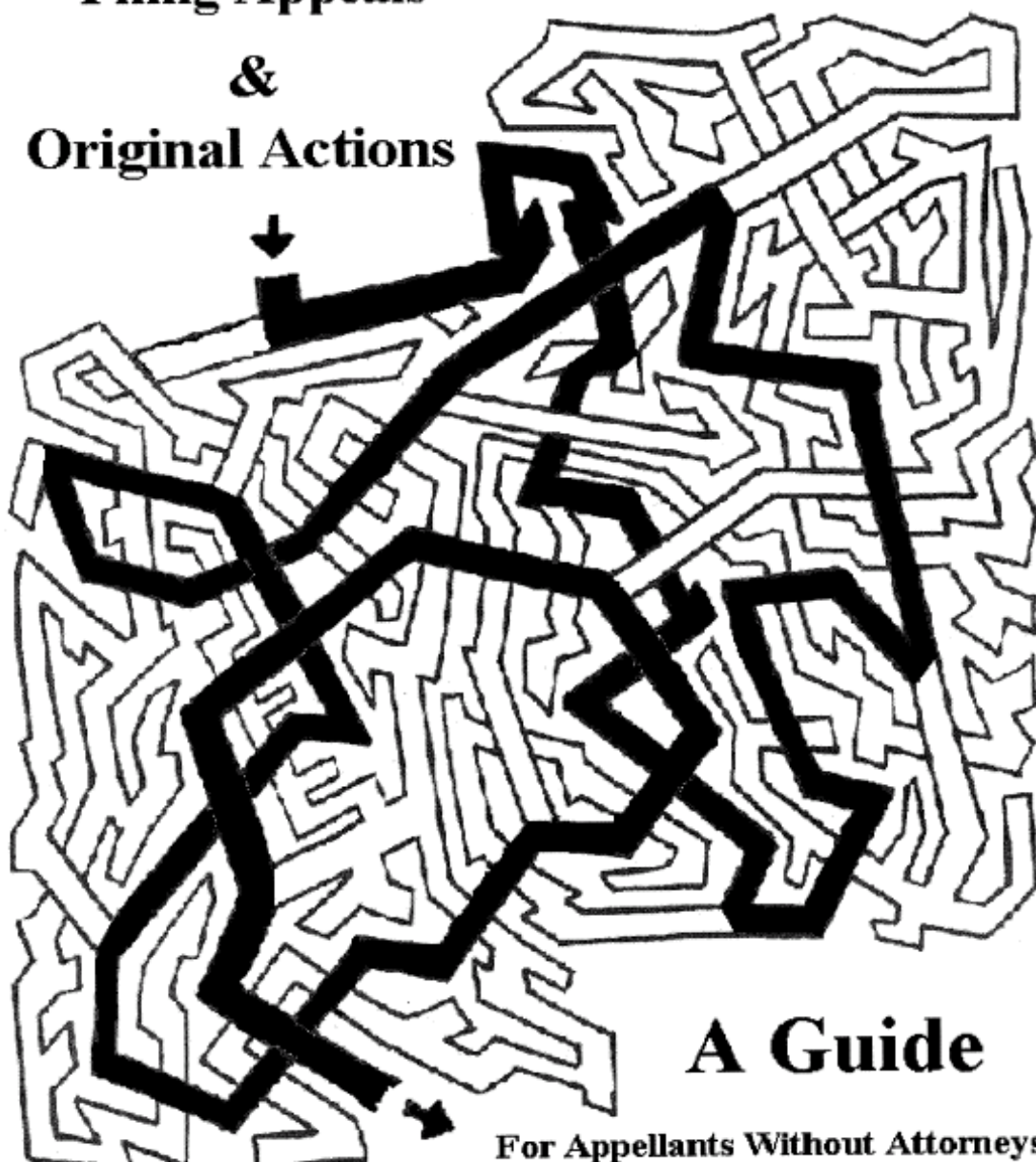


Michigan Court of Appeals

**Filing Appeals
&
Original Actions**



A Guide

For Appellants Without Attorneys

**Published by the
Clerk's Office of the Michigan Court of Appeals**

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All contacts and documents you intend to file with the Court of Appeals must be done through one of the clerk's offices listed below. You may use whichever is most convenient for you.

Addresses and Telephone Numbers

Detroit

Cadillac Place
3020 W. Grand Boulevard, Suite 14-300
Detroit, MI 48202
Telephone: (313) 972-5678

Troy

Columbia Center
201 W. Big Beaver, Suite 800
Troy, MI 48084
Telephone: (248) 524-8700

Lansing

Hall of Justice
925 W. Ottawa St., P. O. Box 30022
Lansing, MI 48909-7522
Telephone: (517) 373-0786

Grand Rapids

State of Michigan Office Building
350 Ottawa St. NW
Grand Rapids, MI 49503-2349
Telephone: (616) 456-1167

Offices are open from 9:00 a.m. until 5:00 p.m., Monday through Friday, except on Court holidays.

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Introduction

The purpose of this manual is to assist non-attorneys who intend to represent themselves in cases before the Court of Appeals. The manual provides information and instructions on the basic documents required to file a case, and the proper format for those documents. In addition, you will find blank forms which you can copy and use. However, this manual is only a *procedural* guide. It does not give legal advice or guidance. It will not help you know whether you will win. It will not protect you from being sanctioned for filing a vexatious appeal.

The requirements described in this manual are based on the Michigan Court Rules (MCR), which are the procedural rules governing all courts in Michigan. MCR 7.201 - 7.219 are the rules specifically written for the Court of Appeals, although other rules also apply. For your convenience, references to the applicable court rules are provided throughout this manual in **inverse shading**. While this manual presents the current interpretation of the current rules, the rules and their interpretations may change at any time. You can find a copy of the Michigan Court Rules at any law library, law school book store or local court house.

CAUTION: The publication of this manual should not be viewed as encouragement to represent yourself. Bringing a case before the Court of Appeals without an attorney is a difficult, if not impossible, task. It will involve a great deal of time and effort, and cause a great deal of frustration. In most cases, you have only one opportunity to have the Court hear your case. A failure to follow all the applicable procedures may result in dismissal of your case and loss of that opportunity. Therefore, the decision to proceed without an attorney should only be made after very serious consideration. Attorneys have had years of training and experience to prepare them for this work. You would be well served to hire one.

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What is an Appeal?

An appeal is a request made to a higher court to review the decision of a lower court to determine if the lower court's decision on an issue was correct. This manual explains the forms and procedures to file an appeal in the Court of Appeals from a circuit court and some administrative tribunals. The party appealing the lower court ruling is called the "appellant," and the party on the opposite side of the case is called the "appellee."

NOTE: An appeal is not a new trial. No evidence is presented and no witnesses are called. The Court of Appeals decides the appeal based on the written record of the proceedings in the lower court. Generally, if an issue was not presented to and decided by the lower court, the Court of Appeals will not consider it.

Types of Appeals/Actions You Can File

There are three (3) types of pleadings you can file in the Court of Appeals:

1. A **claim of appeal** is an appeal that a statute or court rule gives you the right to file. If you file all the required documents correctly within the time allotted, the Court of Appeals must review the substance of your arguments and issue a decision on the merits. **MCR 7.204**
2. An **application for leave to appeal** is a request for the Court of Appeals to review an appeal which you do not have an automatic right to file. The Court of Appeals will decide whether it will grant review based on the content of the correctly filed application. If the Court grants the application, then it will review the substance of your arguments and issue a decision on the merits. **MCR 7.205**
3. An **action for an extraordinary writ** or an **original action** is generally an action in which you are requesting the Court of Appeals to exercise its supervisory authority over a lower court or tribunal, or to exercise its power to force a public official to fulfill his/her duty. There are several types of original actions, three of which are described on page 130 of this manual. **MCR 7.206**

NOTE: If you file a motion when no appeal or original action is pending in the Court of Appeals, it will be rejected. Except for a motion to review bond prior to a criminal trial, **MCR 1.106(H), and a motion to review the release decision regarding a child support bench warrant, **MCR 3.221(I)(1)**, the Court of Appeals does not have jurisdiction over (i.e. the authority to review) motions unless an appeal or original action is already pending in that case.**

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Appeals from Criminal Convictions/Sentences

There are two (2) ways you can file an appeal from a criminal conviction and sentence:
1) claim of appeal by right, and 2) application for leave to appeal.

What you should do:

1. Review and determine whether you are able to meet the criteria for filing a claim of appeal first, because the Court of Appeals must review and decide claims on the merits.

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2. If you cannot meet the criteria for filing a claim of appeal, then review and determine whether you are able to meet the criteria for filing an application for leave to appeal.

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3. If you cannot meet the criteria for filing either a claim of appeal or an application for leave to appeal, then you cannot file an appeal in the Court of Appeals.

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Appeals from Criminal Convictions/Sentences

Claim of Appeal

Claim of Appeal

WHO May Appeal?

Only an “aggrieved” party may file a claim of appeal. **MCR 7.203(A)** If you were convicted of a crime in the circuit court, you would meet this criteria. However, you may not file an appeal on behalf of a spouse, other relative or friend.

WHAT May You Appeal?

You may only file a claim of appeal from a circuit court final judgment or order. **MCR 7.203(A)(1)** Generally in a criminal case, the final judgment or order would be: 1) the original judgment of sentence entered following conviction, 2) a judgment of sentence entered following a properly filed motion for resentencing, 3) a sentence or order entered following a remand from an appellate court in a prior appeal of right, or 4) a judgment of sentence entered following revocation of probation when the underlying conviction was not based on a plea. **MCR 7.202(6)(b)**

NOTE: You may **NOT** file a claim of appeal from a judgment of sentence entered after a **guilty plea or a nolo contendere (no contest) plea**. **MCR 7.203(A)(1)(b)** If you wish to appeal from a plea-based conviction, you must file an application for leave to appeal.

WHEN Must You Appeal?

- 1) You must file the claim of appeal within 42 days after entry of the judgment or order appealed (listed above), **or**
- 2) Within 42 days after an entry of an order denying a timely motion for appointment of counsel, **or**
- 3) If you filed a motion for resentencing, judgment of acquittal or new trial in the circuit court which was denied,
 - the motion must have been filed within 42 days of the original judgment of sentence, **and**
 - you must file the claim of appeal within 42 days of the denial of the motion.

MCR 7.204(A)(2)

WHERE Must You File Your Appeal?

You must file your appeal by mail or in person (no faxes) at one of the four (4) clerk’s offices in this state. **MCR 7.201(B)(2)** The addresses for those offices are listed on page i of this manual. However, at this time all claims are being processed in the **Lansing** office, so it would be most efficient to send your claim there. **NOTE:** Your appeal is not “filed” until it has been received by a clerk of the Court of Appeals. **MCR 7.202(2)&(4)** That means that if you mail your documents, they are not yet “filed” when you place them in a mailbox. They are filed when they reach the Court of Appeals. The clerk’s office will stamp all the documents it receives with the date and time of their arrival.

HOW Must You File Your Claim of Appeal?

NOTE: If the circuit court has determined that you are indigent, you need only sign and timely return the request for counsel form provided by the circuit court. The circuit court will then appoint counsel, order all the transcripts and automatically file the claim of appeal for you. **MCR 6.425(E) & (F)** You would not need to do the following steps.

You must file the following items to correctly submit a claim of appeal from your criminal conviction/sentence:

1. Claim of appeal form. **MCR 7.204(B)(1) & (D)**
2. Copy of the judgment of sentence you are appealing. **MCR 7.204(C)(1)** It would be helpful to also include all orders entered by the circuit court judge denying any motions for resentencing or new trial.
3. A copy of the court reporter's certificate stating that you have ordered and secured payment for the transcript, **or**
A written statement signed by you that the transcript has been ordered (a copy of a letter sent to the court reporter ordering the transcript would suffice), **or**
A statement that there is no record to be transcribed.
MCR 7.204(C)(2)
4. A proof of service stating that you have provided the prosecuting attorney in your circuit court case with a copy of the claim of appeal and all the other documents you filed with the claim. **MCR 7.204(C)(3) & (F)(2)**
5. A copy of your bond, if you are on bond. **MCR 7.204(C)(4)**
6. A copy of the current circuit court register of actions for your case. **MCR 7.204(C)(5)**
7. A jurisdictional checklist. **MCR 7.204(C)(6)**
8. A check or money order for \$375 to cover the entry fee. **MCR 7.204(B)(2)** If you cannot afford to pay the entry fee, then you must file a motion to waive fees, along with an affidavit of indigency and, if you are incarcerated, a prisoner account statement for the past 12 months. **MCR 7.202(3)**

A copy of each of the above forms with instructions on how to fill each out are provided on the following pages.

What happens if I don't file it right?

If you omit one of the above documents, the clerk's office in the Court of Appeals will send you a letter explaining what is defective about your filing, and give you 21 days to correct it. **MCR 7.201(B)(3)** For example, if you wrote a letter to the circuit court asking for a copy of the register of actions, but that court has not sent them before you must file your appeal, then provide a copy of that letter to the Court of Appeals with your claim. You will receive a defect letter from the Court of Appeals, giving you 21 days to send the register of actions. By then, you should have received them and can forward them to the Court of Appeals.

Claim of Appeal Form

What you must do:

You may photocopy the form on the facing page and simply type or print legibly the following information in the shaded areas provided. **NOTE:** Leave the COA No. line blank. The Court of Appeals will assign that number.

- (1) Your case number in the circuit court. It should look something like “2000-123456-FH.” You can obtain this number from any of your circuit court case documents.
- (2) Your name as it appears in the caption of your circuit court documents.
- (3) Your name as it appears in the caption.
- (4) The first shaded area on this line is for the date on which the judgment of sentence was entered. You can obtain this information by looking at the judgment of sentence document or by reviewing the circuit court register of actions.
- (5) The second shaded area on this line is for the name of the county of the circuit court in which you were convicted and sentenced. You can obtain this information from any of your circuit court case documents.

MCR 7.204(D)(1)

- (6) The current date.
- (7) You must sign the claim of appeal.
- (8) Type or print legibly your full name, address and telephone number. If you are incarcerated, this would include your prisoner number and the name and address of the facility where you are living. [Incarcerated persons must place their prisoner number on all documents filed in this Court so that return correspondence will be routed back to them properly.] **Please send this Court a change of address notification immediately if you move.**

MCR 7.204(D)(2)

STATE OF MICHIGAN
IN THE COURT OF APPEALS

People of the State of Michigan,

Plaintiff-Appellee,

COA No. _____

(1)

v

Circuit Ct. No. _____

(2)

_____,

Defendant-Appellant.

CLAIM OF APPEAL

(3)

_____, defendant, claims an appeal from the

(4-5)

judgment of sentence entered _____, in the _____ Circuit Court.

(6)

Date: _____

(7)

(8)

Judgment of Sentence

This form should have been provided to you by the circuit court. If not, you can obtain a copy from the clerk's office of the circuit court in which you were convicted and sentenced. It states the date on which you were sentenced and the length of your sentence(s).

What you must do:

You need only provide the Court of Appeals with a copy of this form. The circuit court judge has already filled it out. The facing page shows an example of what it generally looks like.

Original - Court
1st copy - Corrections
2nd copy - Corrections (for return)

3rd copy - State Police
4th copy - Defendant
5th copy - Prosecutor

Approved, SCAO

STATE OF MICHIGAN 10TH JUDICIAL CIRCUIT SAGINAW COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO CORRECTIONS DEPARTMENT	CASE NO. 97-000111 FH
--	---	--------------------------

ORI MI-1730015 J Court address 111 S. MICHIGAN AVE., SAGINAW, MICHIGAN Court telephone no. (517) 790-5471

Police Report No.

THE PEOPLE OF THE STATE OF MICHIGAN	V	Defendant's name, address, and telephone no. JOHN HERBERT SMITH
Prosecuting attorney name Michael [redacted]	Bar no. P [redacted]	Defendant attorney name TAYLOR, [redacted]
		Bar no. P [redacted]

CTN 73-98-004218-01	SID	DOB 8/18/61
------------------------	-----	----------------

THE COURT FINDS:

1. The defendant, represented by counsel, was found guilty on 11/19/98 of the crimes stated below:

Please: insert "G" for guilty plea; "NC" for not content; "M" for guilty but mentally ill. * Use "X" if sentence is to be enhanced because of Habitual Offender Act.

Count	CONVICTED BY			CRIME	CHARGE (CODE(S) MCL citation/PACC Code
	Plea*	Court*	Jury		
2			X	ROBBERY UNARMED	750.530
99	G			HOA 2ND OFFENSE	769.10

☐ 2. The conviction is reportable to the Secretary of State under MCL 257.732 or MCL 281.1040.

The defendant's driver license number is: _____

☐ 3. HIV testing was ordered on _____ Date _____ Confidential test results are on file.

IT IS ORDERED:

4. Defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM		MAXIMUM		DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos.	Years	Mos.		Mos.	Days	
2 &	12/14/98		66	15		12/14/98			
99									

☐ Defendant shall pay restitution of \$ _____. If a cash bond/bail was personally posted by the defendant, payment toward restitution is to first be collected out of that bond/bail and allocated as specified under MCL 775.22.☐ 5. Sentence(s) to be served consecutively to:☐ each other. ☐ case numbers _____

6. Defendant shall pay a \$60.00 assessment for the Crime Victim Rights Fund.

7. Court recommendation:

☒ 8. Defendant shall pay a \$150.00 assessment for forensic lab test.

December 14, 1998.

Date

Judge ROBERT L. KAC

P15638

Bar no.

Under MCL 769.16a the clerk of the court shall send a copy of this order to the Michigan State Police Central Records Division to create a criminal history record.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

Linda D. Po
Deputy court clerkMCL 769.16(2); MSA 28.902(2); MCL 769.16a; MSA 28.1066(1); MCL 775.22; MSA 28.1259; MCL 790.766; MSA 28.1287(766)
CC 219b (6/98) JUDGMENT OF SENTENCE, COMMITMENT TO CORRECTIONS DEPARTMENT MCR 8.427(A)

Proof of Ordering Transcripts

Any time there is a hearing in the circuit court, a court reporter makes notes or a recording of everything that was said. This would have happened at both your trial and sentencing proceedings, and any other hearing that occurred. You must order the transcripts of every court hearing from the court reporter. **MCR 7.210(B)(1)** You must either pay the court reporter to do the transcripts, or make sure that the circuit court has entered an order indicating that, because you are indigent, the transcript will be provided at county expense. Generally, the court reporter has 91 days to produce the transcripts. **MCR 7.210(B)(3)(b)** However, within 7 days of a transcript being ordered, the court reporter must furnish a certificate that states that the transcript has been ordered, payment has been secured, and when it will be filed. **MCR 7.210(B)(3)(a)**

What you must do:

If you have already received the court reporter's certificate for all the transcripts in your case, you may simply make a copy of the certificate to send to the Court of Appeals.

If you do not yet have the court reporter's certificate, then either provide a statement that the transcript has been ordered, or provide a copy of the letter you wrote to the court reporter ordering the transcript. A form for the statement of ordering transcript is provided on the facing page. You may photocopy the form and simply type or print legibly the following information in the **shaded** areas provided. **NOTE:** Leave the COA No. line blank. The Court of Appeals will assign that number.

- (1) The caption as it appears on the claim of appeal form.
- (2) The date on which you ordered the transcript from the court reporter.
- (3) The current date.
- (4) Your signature.
- (5) Type or print legibly your full name, address and telephone number. If you are incarcerated, this would include your prisoner number and the name and address of the facility where you are living.

Proof of Service

You must serve (mail or hand deliver) one copy of the claim of appeal and all the attached documents on the prosecuting attorney in your circuit court case. You must then provide proof of that service to the Court of Appeals.

What you must do:

You may photocopy the form on the facing page and type or print legibly the following information in the shaded areas provided. **NOTE:** Leave the COA No. line blank. The Court of Appeals will assign that number.

- (1) The caption as it appears on the claim of appeal form.
- (2) The county in which the person who actually served these documents was located. For example, if you mailed these documents from your home, you would put the county in which your home is located.
- (3) The first shaded area on this line is for the date on which the documents were served.
- (4) The second shaded area on this line is for you to state how the documents were served: put the word “mailed” if they were sent in the mail, or put the word “hand-delivered” if they were personally handed to the person served.
- (5) State the full address of the prosecuting attorney where the documents were mailed or hand-delivered.
- (6) List any documents which were filed with your claim of appeal and served on the prosecuting attorney that are not already listed. For example, bond, motion to waive fees, affidavit of indigency, prisoner account statement, etc.
- (7) The current date.
- (8) The signature of the person who actually served the documents. If you served the documents yourself, then you must sign.
- (9) Type or print legibly the full name, address and telephone number of the person who served the documents.

NOTE: You must also provide the circuit court with a copy of these documents. **MCR 7.204(E)**

STATE OF MICHIGAN
IN THE COURT OF APPEALS

People of the State of Michigan,

Plaintiff-Appellee,

COA No. _____

(1)

v

Circuit Ct. No. _____

_____,

Defendant-Appellant.

PROOF OF SERVICE

State of Michigan)

(2)

County of _____)

(3,4)

I affirm that on _____, I _____ one copy of

(5)

the following documents on the Prosecuting Attorney, _____

_____ :

Claim of Appeal, Judgment of Sentence, Statement Regarding Transcript,
Proof of Service, Circuit Court Register of Actions, Jurisdictional
Checklist,

(6)

(7)

Date: _____

(8)

(9)

Bond

What you must do:

You must provide the Court of Appeals with a copy of your bond **only** if you have been awarded a bond to remain out of jail or prison until the Court of Appeals makes a decision. In most cases, a bond is not awarded, so this requirement would not be applicable.

If you were awarded a bond, the circuit court judge would have already filled it out. You would need only provide this Court with a copy of it. An example of what a bond looks like is on the facing page.

ORIGINAL - COURT
CANARY COPY - DEFENDANT
PINK COPY - EXTRA

STATE OF MICHIGAN 30th JUDICIAL CIRCUIT COURT	FELONY BAIL BOND	CASE NO.
--	-----------------------------	----------

Court address **PEOPLE OF THE** Court telephone no.

VS

Defendant

Amount of bond Offense(s)

First appearance for: at on
☐ At the court address above Purpose Time Date

or

To secure my release from custody pending final disposition of the charge or charges, I do acknowledge myself to be indebted to the People (above) in the amount set forth above, unless I perform the following obligations:

1. I will personally appear for any examination, arraignment, trial or sentencing, and will appear at such other times and places as may be directed by the District Court or by the Circuit Court. If I am represented by an attorney in this case, any notice to appear may be given to my attorney in place of personal notice to me.
2. I will abide by any judgement entered in this case and will surrender myself to serve any sentence imposed.
3. I will not leave the State of Michigan without the permission of the court having jurisdiction over my case.
4. I will immediately notify in writing the court having jurisdiction over my case of any change in my address or telephone number. I will maintain weekly contact with Pretrial Services Division, 30th Circuit Court.

5. Other conditions

6. I understand that if I fail to perform any of the above conditions, this bond may be forfeited.

To be
initiated by
defendant

TYPE OF BOND

- ☐ PERSONAL RECOGNIZANCE: By signing this bond, I do agree to its terms.
- ☐ TEN PERCENT BOND: By signing this bond, and depositing ten percent of the amount with the court, I do agree to its terms. I acknowledge that a portion of this deposit will be retained by the court for court costs pursuant to law.
- ☐ CASH BOND: By signing this bond, and by depositing the amount with the court, I do agree to its terms.
- ☐ SURETY BOND: By signing this bond, and by the posting of this bond by the surety bondsmen or company with whom I have contracted, I do agree to its terms. (Use reverse side for surety signature)

BOND MONEY MAY NOT BE RETURNED. THE COURT MAY ORDER THE BOND MONEY APPLIED TO COSTS, FINES, RESTITUTION, OR TO PAY FOR COURT APPOINTED COUNSEL.

Signature Date
 Address Social security no. Date of birth
 City, state, zip Telephone no. Driver's license no.

☐ To be completed by depositor other than Defendant:

I, a third party depositor, understand and agree to the terms and conditions of the above specified bond. I understand that a portion of bond money may not be returned. The Court may order the bond money applied to costs, fines, restitution, or to pay for court appointed attorney.

Signature Address
 Date City, state, zip
 Print or type name of third party Telephone no.

Circuit Court Register of Actions

What you must do:

You must obtain a copy of the circuit court register of actions for your case. You can do that by sending a letter requesting them to the circuit court clerk at the proper address, giving him/her the circuit court case number and name. Also, you will probably have to either provide the clerk with a copying fee, **or** advise him/her that you are indigent and are requesting the register of actions for appeal purposes.

The register of actions have already been compiled by the circuit court, so you need only send the Court of Appeals a copy. An example of what the first page might look like is on the facing page. Each court has its own format, however, so yours may look somewhat different.

DATE 12/28/98 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 1
PEOPLE VS JOHN HERBERT SMITH

CASE 97-000111 FH

OFFENSE 11/23/96

ACTIVE: 4/21/97
CLOSED: 12/14/98

JUDGE: ROBERT L. KAC
AGENCY: BUENA VISTA TOWNSHIP POLICE

DEFENDANT
JOHN HERBERT SMITH

DEFENSE ATTORNEY
TAYLOR, [REDACTED]

DOB: 8/18/61

SSN: [REDACTED]

PHONE: (---)-----

CTN:-----

SID: 001879053H

DSP	CT	SEQ	MCLA/ORDINANCE	CHARGES	DATE	TYPE
AM	1	0	750.530	ROBBERY UNARMED	11/26/96	F
DS	1	1	750.529	ROBBERY ARMED	2/18/98	F
AM	2	0	750.529	ROBBERY ARMED	4/14/97	F
JG	2	1	750.530	ROBBERY UNARMED	2/18/98	F
GP	99	0	769.10	HCA 2ND OFFENSE	2/18/98	F
***				END OF CHARGES	***	

#/PD JUDGE/PONDSMAN
1 TERRY L. C

TYP AMOUNT CHECK
SJ 50000

SET/POST FORF/REV
S11/27/96

CA/PB-----

*** END OF BONDS ***

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
11/26/96	CF	COMPLAINT FILED		CEJ
	WIR	WARRANT ISSUED AND RETURNED		CEJ
11/27/96	FCA	FILE SENT TO COURTROOM FOR ARRAIGNMENT		MSA
	APR	PRELIM EXAM SCHEDULED FOR 12/11/96 AT 2:00 PM	D3	SLT
	MIT	MITTINUS	D6	PAW
	ARR	ARRAIGNMENT	D6	MSA
	-	S/M. \$50000 C/S/P BOND. REFER OAC. PE 12/11/96	D6	MSA
11/27/96	PET	PETITION FOR COURT APPOINTED ATTORNEY	D6	MSA
	*AT	G. JAMES F. REPLACES PRO PER AS ATTORNEY	D3	CEJ
	APP	APPEARANCE FILED	D3	CEJ
12/02/96	OAC	ORDER APPOINTING COUNSEL	C1	LAH
12/05/96	FIF	FINGERPRINTS IN FILE	D3	MSA
12/10/96	FPC	FILE PULLED FOR COURTROOM	D3	CBL
12/11/96	ADJ	ADJOURNED PRELIM EXAM ORIG. SCHED. 12/11/96	D3	SLT
	APR	PRELIM EXAM SCHEDULED FOR 12/19/96 AT 10:15 AM	D3	SLT
12/18/96	FPC	FILE PULLED FOR COURTROOM	D3	CBL
12/19/96	*	ORDER FOR COMPETENCY EXAMINATION.	D5	CEJ
3/03/97	APR	HEARING SCHEDULED FOR 3/07/97 AT 1:45 PM	D3	SLT
	-	COMP HEARING	D3	SLT
3/13/97	APR	PRELIM EXAM SCHEDULED FOR 4/14/97 AT 9:00 AM	D3	SLT
4/10/97	FPC	FILE PULLED FOR COURTROOM	D3	CBL
4/14/97	*	PRELIM HELD. BOND CONT'D. BOCC	D3	CMD
	*	ADD COUNT 02-00 ROBBERY ARMED	D3	CMD
	AM	CHARGE AMENDED 01-00 ROBBERY UNARMED	D3	CMD
	PEH	PRE-LIMINARY EXAM HELD	D3	CMD
	BOC	CTS 02-00:	D3	CMD
4/21/97	C	CASE FILED WITH CIRCUIT COURT	C3	HLB
4/23/97	*JU	ROBERT L. KAC REPLACES LYN	AS JUD	C2 HLB
		*****DFT HAS PENDING ACTION*****		C2 HLB
		*** CONTINUED NEXT PAGE **		

Jurisdictional Checklist

The jurisdictional checklist is a form devised by the Court of Appeals to help you make sure you have filed all the necessary documents to perfect your claim of appeal. A copy of the form is provided on the facing page.

What you must do:

Place a check mark in the box beside every item that you are filing with the claim of appeal. If you have followed the instructions on the preceding pages and page 22, you should be able to check a box for every category except "Track Designation." If you cannot, then either the Court of Appeals does not have jurisdiction over your claim of appeal or your filing is defective in some way.

If the Court of Appeals does not have jurisdiction over your claim of appeal, it will dismiss your claim. You could then determine whether you meet the criteria for filing an application for leave to appeal (see page 27).

If your filing is defective because you did not provide a necessary document, the clerk's office in the Court of Appeals will send you a letter explaining what is missing, and give you 21 days to correct it. **MCR 7.201(B)(3)** If you do not correct it, the claim of appeal will be dismissed. If you do correct it, the claim of appeal will proceed.

Trial Court/Tribunal Name:	Court of Appeals, State of Michigan Jurisdictional Checklist	CASE NO. Trial Court/Tribunal: Court of Appeals:
----------------------------	---	--

Case Name: _____ v _____

INSTRUCTIONS: Please complete this checklist and file with your claim of appeal. **ALL** of the numbered items are required. Check each box as you confirm that each item is being filed.

- ☐ 1. A **signed** claim of appeal form showing the correct lower court number(s). [MCR 7.204(B)(1) & (D).]
- ☐ 2. A filing fee of \$375.00 or appropriate fee substitute. [MCR 7.202(3) & 7.204(B)(2).] (Where multiple lower court or tribunal numbers are involved, an additional filing fee may be required. Appellants will be advised of any additional amount required.)
- ☐ 3. A copy of the order you are appealing. [MCR 7.204(C)(1).] (This is the order deciding the merits and not an order denying reconsideration, new trial, or other post-judgment relief.)
- ☐ 4. Evidence that the necessary transcript has been ordered. [MCR 7.204(C)(2).] (Only one item from a through e is required).
- ☐ a. The complete transcript has been ordered. [MCR 7.210(B)(1)(a).]
- ☐ b. This appeal is from a probate court proceeding which does not require a complete transcript. [MCR 7.210(B)(1)(b).]
- ☐ c. A motion has been filed in the lower court or tribunal for submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(c).]
- ☐ d. The parties have stipulated to submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(d).]
- ☐ e. The parties have stipulated to a statement of facts. [MCR 7.210(B)(1)(e).]
- ☐ 5. Proof of service demonstrating that all other parties have been served. [MCR 7.204(C)(3).] (Even if a party is not an appellee, they must be served.)
- ☐ 6. A **current** register of actions from the lower court or tribunal. [MCR 7.204(C)(5).]

Finality of Order Being Appealed (Check the box that demonstrates your claim of appeal is by right. If neither applies, you do not have an appeal by right.)

- ☐ The claim of appeal is from an order defined as a final order by MCR 7.202(6) or MCR 5.801(B)(1). [MCR 7.203(A)(1).] Please specify which category of final order applies: _____
- ☐ The claim of appeal is from an order which is designated by statute, court rule, or case law as an order appealable by right to the Court of Appeals. Please specify the authority under which you have an appeal by right: _____

Track Designation [Administrative Order 2004-5]

- ☐ This appeal involves only summary disposition. The nature of the action is: _____

Date

Preparer's Signature

7/04

Filing Fees

What you must do:

You must pay the entry or filing fee before the Court of Appeals can review your claim of appeal. **MCR 7.204(B)(2)** It is currently \$375. You may pay the fee by providing a check or money order in that amount made payable to “Court of Appeals.”

If you are indigent and cannot afford the fee, you may file a motion to waive fees instead. **MCR 7.202(3)** The Court of Appeals may grant the motion so that you will not have to pay any filing fee, or it may deny your motion and require that you pay all or just a portion of the filing fee. See the Motion to Waive Fees section on pages 153 - 159 of this manual for directions and forms to file a motion to waive fees.

End of claim of appeal section.

Appellant's Brief

The documents described on the previous pages will initiate your claim of appeal with the Court of Appeals. You will also later need to file an appellant's brief, outlining the issues in your case that you want the Court of Appeals judges to review and decide.

WHEN Must you File the Brief?

Your Appellant's Brief is due 56 days after the claim of appeal has been filed, or the timely ordered transcripts have been filed with the circuit court, whichever is later. **MCR 7.212(A)(1)(a)(iii)**

WHERE Must you File the Brief?

You may file your brief in the same place that you filed your claim of appeal. Refer to page 6 for details regarding filing.

HOW Must you File the Brief?

You must file five (5) copies of your brief, which must have the following general format characteristics: **MCR 7.212(B)**

1. At least 1" margins on the top, bottom, and both sides.
2. Printed legibly or typed in not smaller than 12-point type.
3. Double-spaced. Footnotes and quotations can be single-spaced.
4. No more than 50 pages, not counting indexes and appendices. The pages must be numbered consecutively. You may number the pages of the indexes in the beginning of the brief in small roman numerals (i.e. i, ii, iii, etc.) and then begin the numbers of the remainder of the brief, starting with the Statement of Facts, in Arabic numbers (i.e. 1, 2, 3, etc.).

There are several sections needed in a brief. This first is:

Brief Cover Page

What you must do:

You may photocopy the form on the facing page and simply type or print legibly the following information in the **shaded** areas provided.

- (1) The caption should be the same as on your claim of appeal, except now you should fill in the Court of Appeals number.
- (2) Check whether or not you are requesting oral argument. If you are incarcerated, it is not likely that you will be able to appear and argue, so you would not request it.
- (3) Although not required, it is worthwhile to put your name and address on the cover page.

MCR 7.212(C)(1)

The directions and forms to complete the brief are on pages 49 – 63.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

People of the State of Michigan,

Plaintiff-Appellee,

COA No.

(1)

v

Circuit Ct. No.

.

Defendant-Appellant.

(2)

ORAL ARGUMENT

☐ **REQUESTED**

☐ **NOT REQUESTED**

APPELLANT’S BRIEF

(3)

.
.
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.
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Appeals from Criminal Convictions/Sentences

Application for Leave to Appeal

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Application for Leave to Appeal

WHO May Appeal?

You must have “standing” to file an application for leave to appeal. *Grace Petroleum Corp v Public Service Comm*, 178 Mich App 309, 312 (1989). Generally, that means that the requirement for filing an application is the same as for filing a claim: that is, only an “aggrieved” party may file an appeal. **MCR 7.203(A)** If you are appealing your conviction or sentence for a crime, you would meet this criteria. However, you may not file an appeal on behalf of a spouse, other relative or friend.

WHAT May you Appeal?

You may file an application for leave to appeal from the following orders **if you have not previously filed an appeal from them:** **MCR 7.203(B)** **MCR 7.205(F)(2)**

1. An interlocutory order, meaning an order that was entered in the circuit court case, but is not a final judgment or order disposing of the whole controversy. **MCR 7.203(B)(1)**
2. A postjudgment order, meaning an order entered after the trial court has already entered a final judgment or order. **MCR 7.203(B)(1)**
3. A circuit court final judgment or order from an appeal from the district court. **MCR 7.203(B)(2)**
4. A plea of guilty or nolo contendere (no contest) in the circuit court. **Const 1963, Art 1 Sec 20** **MCR 7.203(B)(4)**
5. A judgment or order from which you could have had an appeal by right, but the claim of appeal was not timely filed. **MCR 7.203(B)(5)** In this case you must file a delayed application for leave to appeal. **MCR 7.205(F)(1)**

WHEN Must you Appeal?

To file a timely application for leave to appeal, you must file the application within 21 days after the circuit court entered the judgment or order you are appealing. **MCR 7.205(A)**

To file a delayed application for leave to appeal:

1. you must file the application within 12 months after the circuit court enters the judgment or order you are appealing, **MCR 7.205(F)(3)** **or**
 - if you filed a motion for new trial, judgment of acquittal, withdrawal of a plea or resentencing within 12 months after the circuit court entered the judgment or order you are appealing, you must file the application within 21 days after entry of the order denying that motion, **MCR 7.205(F)(4)** **or**
 - if you filed a delayed request for appointment of counsel in the trial court within 12 months after the circuit court entered the judgment or order you are appealing, and you ordered the appropriate transcripts within 28 days of the order denying appointment of counsel, you must file the application within 42 days after the filing of the transcripts in the trial court. **MCR 7.205(F)(4)(a - c)**

or

2. you must file the application within 12 months after the circuit court enters an order denying a motion for relief from judgment **MCR 6.509(A)**

WHERE Must You File Your Appeal?

You must file your appeal by mail or in person (no faxes) at one of the four (4) clerk's offices in this state. **MCR 7.201(B)(2)** The addresses for those offices are listed on page i of this manual.

NOTE: Your appeal is not "filed" until it has been received by a clerk of the Court of Appeals. **MCR 7.202(2)&(4)** That means that if you mail your documents, they are not yet "filed" when you place them in the mailbox. They are filed when they reach the Court of Appeals. The clerk's office will stamp all the documents it receives with the date and time of their arrival.

HOW Must You File Your Leave Application?

You must file the following documents to correctly submit an application for leave to appeal from your criminal conviction/sentence:

1. Five (5) copies of an application for leave to appeal, one signed. **MCR 7.205(B)(1)**
2. Five (5) copies of the judgment or order you are appealing, along with any opinion or findings of fact the circuit court issued. In addition, five (5) copies of any opinion or findings that the circuit court reviewed in making its decision, such as the opinion of the district court if your initial case began there. **MCR 7.205(B)(2)**
3. Five (5) copies of the current circuit court register of actions. **MCR 7.205(B)(2)**

4. One (1) copy of that portion of the transcript that substantiates the issues you raise in the application. **MCR 7.205(B)(4)** For example, if you are appealing from your guilty plea and sentence, you would need to provide the Court of Appeals with a copy of the transcripts of your plea and sentencing hearings.
5. A proof of service stating that you have provided the prosecuting attorney in your circuit court case with a copy of the application for leave to appeal and all the other documents you filed with the application. **MCR 7.205(B)(6)**
6. If this is a delayed application, five (5) copies of a statement explaining the reason(s) for the delay. **MCR 7.205(F)(1)**
7. A check or money order for \$375 to cover the entry fee. **MCR 7.205(B)(7)** If you cannot afford to pay the entry fee, then you must file a motion to waive fees, along with an affidavit of indigency and, if you are incarcerated, a prisoner account statement for the past 12 months. **MCR 7.202(3)**

A copy of each of the above forms with instructions on how to fill each out are provided on the following pages.

What happens if I don't file it right?

If you omit one of the above documents, the clerk's office in the Court of Appeals will send you a letter explaining what is defective about your filing, and give you 21 days to correct it. **MCR 7.201(B)(3)** For example, if you wrote a letter to the circuit court asking for a copy of the register of actions, but that court has not sent them before you must file your appeal, then provide a copy of the letter to the Court of Appeals with your claim. You will receive a defect letter from the Court of Appeals, giving you 21 days to send the register of actions. By then, you should have received them and can forward them to the Court of Appeals.

Application For Leave to Appeal

The application for leave to appeal is a pleading in the form of a brief that conforms to MCR 7.212(C) and must have the following general format characteristics: **MCR 7.212(B)**

- At least 1” margins on the top, bottom, and both sides.
- Printed legibly or typed in not smaller than 12-point type.
- Double-spaced. Footnotes and quotations can be single-spaced.
- No more than 50 pages, not counting indexes and appendices. The pages must be numbered consecutively. You may number the pages of the indexes in the beginning of the brief in small roman numerals (i.e. i, ii, iii, etc.) and then begin the numbers of the remainder of the brief, starting with Statement of Facts, in Arabic numbers (i.e. 1, 2, 3, etc.).

There are several sections in an application for leave to appeal. The first is the:

Application Cover Page

What you must do:

You may photocopy the form on the facing page and simply type or print legibly the following information in the **shaded** areas provided. **NOTE:** Leave the COA No. line blank. The Court of Appeals will assign that number.

- (1)** Your case number in the circuit court. It should look something like “2000-123456-FH.” You can obtain this number from any of your circuit court documents.
- (2)** Your name as it appears in the caption of your circuit court documents.
- (3)** Check the appropriate box indicating whether you are filing a timely or delayed application.
- (4)** The current date.
- (5)** Your signature. **MCR 7.205(B)(1)**
- (6)** Type or print legibly your full name, address and telephone number. If you are incarcerated, this would include your prisoner number and the name and address of the facility where you are living. [Incarcerated persons must place their prisoner number on all documents filed in this Court so that return correspondence will be routed back to them properly.] **Please send this Court a change of address notification immediately if you move.**

The directions and forms to complete the application are on pages 49 – 63. Then return to page 34 and attach the documents on the following pages.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

People of the State of Michigan,

Plaintiff-Appellee,

COA No. _____

(1)

v

Circuit Ct. No. _____

(2)

_____,

Defendant-Appellant.

☐ APPLICATION FOR LEAVE TO APPEAL

(3)

☐ DELAYED APPLICATION FOR LEAVE TO APPEAL

(4)

Date: _____

(5)

(6)

Judgment or Order Appealed

A copy of the judgment or order you are appealing should have been provided to you by the circuit court. If not, you can obtain a copy from the clerk's office of the circuit court that entered the order. In a criminal case, it is very likely that you are appealing either the judgment of sentence or an order denying a motion for relief from judgment. An example of a judgment of sentence is on the facing page.

What you must do:

You must provide the Court of Appeals with five (5) copies of the judgment or order you are appealing, and any other opinion or findings of fact that the circuit court entered or reviewed in making its decision.

Original - Court
1st copy - Corrections
2nd copy - Corrections (for return)

3rd copy - State Police
4th copy - Defendant
5th copy - Prosecutor

Approved:SCAO

STATE OF MICHIGAN 10TH JUDICIAL CIRCUIT SAGINAW COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO CORRECTIONS DEPARTMENT	CASE NO. 97-000111 FH
--	---	--------------------------

ORI MI-1730015 J Court address 111 S. MICHIGAN AVE., SAGINAW, MICHIGAN Court telephone no. (517) 790-5471

Police Report No.

THE PEOPLE OF THE STATE OF MICHIGAN	V	Defendant's name, address, and telephone no. JOHN HERBERT SMITH
Prosecuting attorney name Michael [redacted]	Bar no. P [redacted]	Defendant attorney name TAYLOR, [redacted]
		Bar no. P [redacted]

CTN 73-98-004218-01	SID	DOB 8/18/61
------------------------	-----	----------------

THE COURT FINDS:

1. The defendant, represented by counsel, was found guilty on 11/19/98 of the crimes stated below:

Please: insert "G" for guilty plea; "NC" for not content; "M" for guilty but mentally ill. * Use "X" if sentence is to be enhanced because of Habitual Offender Act.

Count	CONVICTED BY			CRIME	CHARGE (CODE(S) MCL citation/PACC Code
	Plea*	Court*	Jury		
2			X	ROBBERY UNARMED	750.530
99	G			HOA 2ND OFFENSE	769.10

☐ 2. The conviction is reportable to the Secretary of State under MCL 257.732 or MCL 281.1040.

The defendant's driver license number is: _____

☐ 3. HIV testing was ordered on _____ Date _____ Confidential test results are on file.

IT IS ORDERED:

4. Defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM		MAXIMUM		DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos. Days	Years	Mos. Days		Mos.	Days	
2 &	12/14/98		66	15		12/14/98			
99									

☐ Defendant shall pay restitution of \$ _____. If a cash bond/bail was personally posted by the defendant, payment toward restitution is to first be collected out of that bond/bail and allocated as specified under MCL 775.22.☐ 5. Sentence(s) to be served consecutively to:☐ each other. ☐ case numbers _____

6. Defendant shall pay a \$60.00 assessment for the Crime Victim Rights Fund.

7. Court recommendation:

☒ 8. Defendant shall pay a \$150.00 assessment for forensic lab test.December 14, 1998.
Date

Judge ROBERT L. KAC

P15638
Bar no.

Under MCL 769.16a the clerk of the court shall send a copy of this order to the Michigan State Police Central Records Division to create a criminal history record.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

Linda D. Po
Deputy court clerkMCL 769.16(2); MSA 28.902(2); MCL 769.16a; MSA 28.1066(1); MCL 775.22; MSA 28.1259; MCL 790.766; MSA 28.1287(766)
CC 219b (6/98) JUDGMENT OF SENTENCE, COMMITMENT TO CORRECTIONS DEPARTMENT MCR 8.427(A)

Circuit Court Register of Actions

What you must do:

You must obtain a copy of the circuit court register of actions for your case. You can do that by sending a letter requesting them to the circuit court clerk at the proper address, giving him/her the circuit court case number and name. Also, you will probably have to either provide the clerk with a copying fee, **or** advise him/her that you are indigent and are requesting the register of actions for appeal purposes.

The register of actions have already been compiled by the circuit court, so you need only send the Court of Appeals a copy. An example of what the first page might look like is on the facing page. Each court has its own format, however, so yours may look somewhat different.

DATE 12/22/98 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 1
PEOPLE VS JOHN HERBERT SMITH

CASE 97-000111 FH

OFFENSE 11/23/96

ACTIVE: 4/21/97
CLOSED: 12/14/98

JUDGE: ROBERT L. KAC
AGENCY: BUENA VISTA TOWNSHIP POLICE

DEFENDANT
JOHN HERBERT SMITH

DEFENSE ATTORNEY
TAYLOR, [REDACTED]

DOB: 8/18/61

SSN: [REDACTED]

PHONE: (---)-----

CTN:-----

SID: 001879053H

DSP	CT	SEQ	MCLA/ORDINANCE	CHARGES	DATE	TYPE
AM	1	0	750.530	ROBBERY UNARMED	11/26/96	F
DS	1	1	750.529	ROBBERY ARMED	2/18/98	F
AM	2	0	750.529	ROBBERY ARMED	4/14/97	F
JG	2	1	750.530	ROBBERY UNARMED	2/18/98	F
GP	99	0	769.10	HCA 2ND OFFENSE	2/18/98	F
***				END OF CHARGES	***	

#/PD JUDGE/PONDSMAN
1 TERRY L. C

TYP AMOUNT CHECK
SJ 50000

SET/POST FORF/REV
S11/27/96

CA/PB-----

*** END OF BONDS ***

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
11/26/96	CF	COMPLAINT FILED		CEJ
	WIR	WARRANT ISSUED AND RETURNED		CEJ
11/27/96	FCA	FILE SENT TO COURTROOM FOR ARRAIGNMENT		MSA
	APR	PRELIM EXAM SCHEDULED FOR 12/11/96 AT 2:00 PM	D3	SLT
	MIT	MITTINUS	D6	PAW
	ARR	ARRAIGNMENT	D6	MSA
	-	S/M. \$50000 C/S/P BOND. REFER OAC. PE 12/11/96	D6	MSA
11/27/96	PET	PETITION FOR COURT APPOINTED ATTORNEY	D6	MSA
	*AT	G. JAMES F. REPLACES PRO PER AS ATTORNEY	D3	CEJ
	APP	APPEARANCE FILED	D3	CEJ
12/02/96	OAC	ORDER APPOINTING COUNSEL	C1	LAH
12/05/96	FIF	FINGERPRINTS IN FILE	D3	MSA
12/10/96	FPC	FILE PULLED FOR COURTROOM	D3	CBL
12/11/96	ADJ	ADJOURNED PRELIM EXAM ORIG. SCHED. 12/11/96	D3	SLT
	APR	PRELIM EXAM SCHEDULED FOR 12/19/96 AT 10:15 AM	D3	SLT
12/18/96	FPC	FILE PULLED FOR COURTROOM	D3	CBL
12/19/96	*	ORDER FOR COMPETENCY EXAMINATION.	D5	CEJ
3/03/97	APR	HEARING SCHEDULED FOR 3/07/97 AT 1:45 PM	D3	SLT
	-	COMP HEARING	D3	SLT
3/13/97	APR	PRELIM EXAM SCHEDULED FOR 4/14/97 AT 9:00 AM	D3	SLT
4/10/97	FPC	FILE PULLED FOR COURTROOM	D3	CBL
4/14/97	*	PRELIM HELD. BOND CONT'D. BOCC	D3	CMD
	*	ADD COUNT 02-00 ROBBERY ARMED	D3	CMD
	AM	CHARGE AMENDED 01-00 ROBBERY UNARMED	D3	CMD
	PEH	PRE-LIMINARY EXAM HELD	D3	CMD
	BOC	CTS 02-00:	D3	CMD
4/21/97	C	CASE FILED WITH CIRCUIT COURT	C3	HLB
4/23/97	*JU	ROBERT L. KAC REPLACES LYN	AS JUD	C2 HLB
		*****DFT HAS PENDING ACTION*****		C2 HLB
		*** CONTINUED NEXT PAGE **		

Copy of Relevant Transcript

Any time there is a hearing in the circuit court, a court reporter makes notes or a recording of everything that was said. This would have happened at both your trial and sentencing proceedings, and any other hearing that occurred.

What you must do:

You must order from the court reporter, and send to the Court of Appeals, a copy of that portion of the transcript that substantiates or is relevant to the issues that you raise in the application. You must either pay the court reporter to do the transcripts, or make sure that the circuit court has entered an order indicating that, because you are indigent, the transcript will be provided at county expense. Because a court reporter generally has 91 days to provide a transcript **MCR 7.210(B)(3)(b)** (although shorter ones are often provided sooner), you may have to provide one of the substitutes described below with the application, and send a copy of the transcript as soon as it is provided.

If you do not yet have the transcript, but you have the court reporter's certificate, send a copy of the certificate to the Court of Appeals. The court reporter must provide a certificate within 7 days of the transcript being ordered and payment secured. **MCR 7.210(B)(3)(a)**

If you do not yet have either the transcript or the court reporter's certificate, then either provide a statement that the transcript has been ordered, or provide a copy of the letter you wrote to the court reporter ordering the transcript. **MCR 7.205(B)(4)** A form for the statement of ordering transcript is provided on the facing page. You may photocopy the form and simply type or print legibly the following information in the **shaded** areas provided.

- (1)** The caption as it appears on your application.
- (2)** The date on which you ordered the transcript from the court reporter.
- (3)** The current date.
- (4)** Your signature.
- (5)** Type or print legibly your full name, address and telephone number. If you are incarcerated, this would include your prisoner number and the name and address of the facility where you are living.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

People of the State of Michigan,

Plaintiff-Appellee,

COA No. _____

(1)

v

Circuit Ct. No. _____

_____,

Defendant-Appellant.

STATEMENT OF ORDERING TRANSCRIPT

Appellant ordered the transcript of relevant hearings related to the above case on

(2)

_____. ..

(3)

Date: _____

(4)

(5)

Proof of Service

You must serve (mail or hand deliver) one copy of the application for leave to appeal and all the attached documents on the prosecuting attorney in your circuit court case. You must then provide proof of that service to the Court of Appeals. **MCR 7.205(B)(6)**

What you must do:

You may photocopy the form on the facing page and type or print legibly the following information in the **shaded** areas provided.

- (1) The caption as it appears on your application.
- (2) The county in which the person who actually served these documents was located. For example, if you mailed these documents from your home, you would put the county in which your home is located.
- (3) In the first shaded area on the line, enter the date on which the documents were served.
- (4) In the second shaded area on the line, state how the documents were served: put the word “mailed” if they were sent in the mail, or put the word “hand-delivered” if they were personally handed to the persons served.
- (5) State the full address of the prosecuting attorney where the documents were mailed or hand-delivered.
- (6) List any documents which were filed with your application and served on the prosecuting attorney that are not already listed. For example, any additional opinion or findings of fact, motion to waive fees, affidavit of indigency, prisoner account statement, etc.
- (7) The current date.
- (8) The signature of the person who actually served the documents. If you served the documents yourself, then you must sign.
- (9) Type or print legibly the full name, address and telephone number of the person who served the documents.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

People of the State of Michigan,

Plaintiff-Appellee,

COA No. _____

(1)

v

Circuit Ct. No. _____

_____,

Defendant-Appellant.

PROOF OF SERVICE

State of Michigan)

(2)

County of _____)

(3,4)

I affirm that on _____, I _____ one copy of

(5)

the following documents on the Prosecuting Attorney, _____

_____.

Application for Leave to Appeal, Judgment/Order Appealed, Proof of
Service, Circuit Court Register of Actions, Transcript/Statement Regarding
Transcript, _____

(6)

(7)

Date: _____

(8)

(9)

Statement Explaining Delay

If you are filing a delayed application for leave to appeal, you must provide a statement explaining the reason(s) for the delay – i.e. why a claim of appeal or the application for leave to appeal was not timely filed. **MCR 7.205(A) & (F)(1)**

What you must do:

You may photocopy the form on the facing page, and check the box next to all explanations that apply. If none of the preprinted statements apply, or you have an additional explanation, check the box next to “Other,” and type or print legibly your explanation.

Statement Explaining Delay

This application for leave to appeal is being filed more than 21 days after the circuit court's entry of the judgment/order being appealed because: (Check all the boxes that apply to you.)

- ☐ I did not know I could appeal my decision until recently.
 - ☐ I could not afford the copying cost and postage to file this application until recently.
 - ☐ I could not afford the entry fee, and did not know I could request a waiver of fees until recently.
 - ☐ I did not know how to appeal this decision until recently.
 - ☐ I needed to get help to complete my application.
 - ☐ Other: _____
-

Filing Fees

What you must do:

You must pay the entry or filing fee before the Court of Appeals can review your application for leave to appeal. **MCR 7.205(B)(7)** It is currently \$375. You may pay the fee by providing a check or money order in that amount, made payable to “Court of Appeals.”

If you are indigent and cannot afford the fee, you may file a motion to waive fees instead. **MCR 7.202(3)** The Court of Appeals may grant the motion so that you will not have to pay any filing fee, or it may deny your motion and require that you pay all or just a portion of the filing fee. See the Motion to Waive Fees section on pages 153-159 of this manual for directions and forms to file a motion to waive fees.

End of application for leave to appeal section.

Appellant's Brief

The documents described on the previous pages will initiate your application for leave to appeal with the Court of Appeals. If your application is granted, you will still need to file the appellant's brief.

WHEN Must you File the Brief?

If this is an interlocutory appeal, your appellant's brief is due 28 days after the order granting leave to appeal has been entered, or the timely ordered transcripts have been filed with the circuit court, whichever is later. **MCR 7.212(A)(1)(a)(i)**

In all other cases, your appellant's brief is due 56 days after the order granting leave to appeal has been entered, or the timely ordered transcripts have been filed with the circuit court, whichever is later. **MCR 7.212(A)(1)(a)(iii)**

WHERE Must you File the Brief?

You may file your brief in the same place that you filed your application for leave to appeal. Refer to page 30 for details regarding filing.

HOW Must you File the Brief?

You must file five (5) copies of your brief, which must have the following general format characteristics: **MCR 7.212(B)**

- At least 1" margins on the top, bottom, and both sides.
- Printed legibly or typed in not smaller than 12-point type.
- Double-spaced. Footnotes and quotations can be single-spaced.
- No more than 50 pages, not counting indexes and appendices. The pages must be numbered consecutively. You may number the pages of the indexes in the beginning of the brief in small roman numerals (i.e. i, ii, iii, etc.) and then begin the numbers of the remainder of the brief, starting with the Statement of Facts, in Arabic numbers (i.e. 1, 2, 3, etc.).

There are several sections needed in a brief. The first is:

Brief Cover Page

What you must do:

You may photocopy the form on the facing page and simply type or print legibly the following information in the **shaded** areas provided.

- (1) The caption should be the same as on your application, except that now you should also fill in the Court of Appeals number.
- (2) Check whether or not you are requesting oral argument. If you are incarcerated, it is not likely that you will be able to appear and argue, so you would not request it.
- (3) Although not required, it is worthwhile to put your name and address on the cover page.

MCR 7.212(C)(1)

You may just copy the subsequent sections necessary in the brief from your application for leave to appeal that you filed earlier. If you wish to rewrite it, follow the instructions beginning on page 49.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

People of the State of Michigan,

Plaintiff-Appellee,

COA No.

(1)

v

Circuit Ct. No.

.

Defendant-Appellant.

(2)

ORAL ARGUMENT

☐ REQUESTED

☐ NOT REQUESTED

APPELLANT’S BRIEF

(3)

.
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.
.

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Appeals from Criminal Convictions/Sentences

**Brief &
Application for Leave to Appeal
Form**

Table of Contents Section

What you must do:

You must provide a table of contents listing the section headings of the brief or application, and citing the page number(s) where each is located. **MCR 7.212(C)(2)** You may photocopy the form on the facing page and simply type or print legibly the information required in the **shaded** areas as described below.

Each of the individual sections is explained in detail on the following pages. Once you have completed your brief or application, you must fill in the page numbers where each section starts.

Each argument you list should correspond to a question in your “Statement of Questions Involved” in order of presentation. **MCR 7.212(C)(2)** That is, Argument I should correspond with Question I, and they should be discussed first in the full argument section.

Under Statement of Argument, write the principal point of your argument. It should be only one or two sentences long. Then note the page number where your full argument is presented.

Example:

If your first question in your Statement of Questions Involved is as follows:

- I. WHETHER THERE WAS SUFFICIENT EVIDENCE TO CONVICT THE DEFENDANT OF ARMED ROBBERY.

Your statement of argument might be something like:

THERE WAS INSUFFICIENT EVIDENCE OF THE “ARMED” ELEMENT OF ARMED ROBBERY, BECAUSE NONE OF THE WITNESSES TESTIFIED THAT THEY SAW DEFENDANT WITH A GUN.

Repeat the argument structure shown if there are additional arguments.

TABLE OF CONTENTS

	<u>Page No.</u>
Index of Authorities
Jurisdictional Statement
Statement of Questions Involved
Statement of Facts
Argument I:
Standard of Review
Statement of Argument:
.....	
Argument II:	
Standard of Review
Statement of Argument:
.....	
Relief Requested

Index of Authorities Section

What you must do:

You must list, in alphabetical order, all cases cited in the brief or application. Each case must have the complete citation, including the year of decision. You must list all the pages on which the case citation appears. **MCR 7.212(C)(3)**

You must also list all other authorities that you cite. This would include statutes (including parallel citations), the Michigan Court Rules (MCR), legal encyclopedias, Law Review articles, etc. **MCR 7.212(C)(3)**

You may photocopy the form on the facing page and simply type or print legibly the citations and page numbers where the citations are stated. Use additional pages as needed.

INDEX OF AUTHORITIES

Page Nos.

Cases:

People of Michigan v. [redacted] [redacted]

Statutes:

Other:

Statement of Jurisdiction Section

What you must do:

You must provide the Court of Appeals with sufficient information to show that it has jurisdiction over (i.e. the legal authority to review) your appeal. **MCR 7.212(C)(4)**

You may photocopy the form on the facing page and simply type or print legibly the following information in the shaded areas provided. **MCR 7.212(C)(4)(a)**

- (1) If you filed a claim of appeal, write “7.203(A).” If you filed/are filing a timely application, write “7.205(A).” If you filed/are filing a delayed application, write “7.205(F).” **MCR 7.212(C)(4)(a)**
- (2) The date of the judgment or order you are appealing. **MCR 7.212(C)(4)(a)(i)**
- (3) Claim of appeal: A timely motion for new trial, judgment of acquittal or resentencing filed in the circuit court will toll (i. e. suspend the running of) your time for filing a claim of appeal. **MCR 7.204(A)(2)(d)**

Application: A motion for new trial, judgment of acquittal, withdrawal of a plea, or resentencing, as well as a request for counsel, filed in the circuit court within 12 months of the entry of the judgment or order you are appealing will toll (i. e. suspend the running of) the time within which you have to file an application. **MCR 7.205(F)(4)**

If you have filed one of these pleadings, provide the type of pleading you filed, the date on which you filed it and the date that the order was entered denying the motion. **MCR 7.212(C)(4)(a)(ii)**

- (4) The date you filed the claim or application. **MCR 7.212(C)(4)(a)(iv)**

STATEMENT OF JURISDICTION

- (1) The Court of Appeals has jurisdiction over this appeal under MCR . . . , based on the following information.
- (2) The judgment or order being appealed was entered on
- (3) I filed a motion for . . . on
The order denying this motion was entered on
- (4) I filed this appeal on

Statement of Questions Involved Section

What you must do:

You must concisely state the issues or questions you want the judges of the Court of Appeals to consider in reviewing your appeal, and note the page number on which your corresponding argument begins. Each question must be stated and numbered separately, and be followed by the circuit court's and your answer to the question. The answer(s) to the questions should usually be "Yes" or "No." **MCR 7.212(C)(5)**

Examples of questions might be:

I. WHETHER THERE WAS SUFFICIENT EVIDENCE PRESENTED AT TRIAL TO CONVICT DEFENDANT-APPELLANT OF ARMED ROBBERY.

The trial court answers: Yes

Appellant answers: No

II. WHETHER THE PROSECUTOR COMMITTED MISCONDUCT SUCH THAT A NEW TRIAL IS REQUIRED, EVEN THOUGH DEFENSE COUNSEL FAILED TO OBJECT TO THE MISCONDUCT AT TRIAL.

The trial court answers: The trial court did not answer

Appellant answers: Yes

You may photocopy the form on the facing page and simply type or print legibly your statement of questions in the **shaded** areas. Continue adding to the question numbers as needed. Use additional pages as needed. [However, it is suggested that you concisely raise only genuine issues. Mere volume does not help you win an appeal.]

STATEMENT OF QUESTIONS INVOLVED

Page No.

I.

The trial court answers:

Appellant answers:

II.

The trial court answers:

Appellant answers:

Statement of Facts Section

What you must do:

You must explain the facts relevant to your appeal in a clear, concise and chronological statement. You must fairly state all the material facts, even when they are not favorable to you. You must also show the Court of Appeals where in the circuit court record this fact came from. For example, you must cite a specific page of a transcript, or note some other document filed in the circuit court. You must describe:

1. The nature of the action. This would include that this is a criminal case, the crimes for which you were convicted, and the lengths and nature of your sentences.
2. The character of the pleadings and proceedings. This would include whether you had a jury or bench trial, or pleaded guilty, and the dates of all proceedings, including sentencing.
3. The substance of proof. This would include a description of the witnesses' testimony at trial, the substance of your guilty plea, the material statements made at sentencing, etc.
4. The dates of important documents and events.
5. The material rulings and orders that the trial court issued.
6. The verdict and sentence.
7. Anything else necessary to an understanding of the questions involved.

MCR 7.212(C)(6)

8. If this is an interlocutory application, you must state the facts which show how you would suffer substantial harm by waiting for the final judgment before appealing. **MCR 7.205(B)(1)**

You may photocopy the form on the facing page and type or print legibly your concise statement of facts. Use additional pages as needed.

STATEMENT OF FACTS

Arguments Section

This is the portion of the brief in which you provide your thorough, but concise, legal analysis, and try to persuade the Court of Appeals judges of your position. The argument section must be formatted as described below. **MCR7.212(C)(7)**

What you must do:

You may photocopy the form on the facing page and type or print legibly the following information in the **shaded** areas provided.

- (1) You must state the principal point of your argument in **CAPITAL** or **boldface** lettering at the top of each argument. You may simply copy the principle point from your Table of Contents if you wish.
- (2) **Standard of Review.** The Court of Appeals' review of an appeal is limited by the legal standard imposed on it. Your legal research will need to include what that standard is for each issue. Many trial issues, such as whether the trial court should have admitted certain evidence, are reviewable under the "abuse of discretion" standard. Here is an example of how that standard can be stated:

Appellate review of a trial court's decision to admit or exclude evidence is limited to whether it constituted an abuse of discretion. *People v Brownridge*, 459 Mich 456, 460 (1999). An appellate court will find an abuse of discretion if an unprejudiced person, considering the facts upon which the trial court made its decision, would conclude that there was no justification for the ruling made. *People v Ullah*, 216 Mich App 669, 673 (1996).

However, there are other standards applicable to other situations, such as the standards of review for sentences, sufficiency of the evidence and findings of fact.

- (3) **Preservation of Error.** Give the page reference to the transcript or other documents to show where the issue was preserved for appeal: that is, where it was discussed in the proceedings or documents filed in the circuit court.
- (4) **Analysis.** Thoroughly, but concisely, cite and explain the applicable law for the issue involved, show how it applies to the facts of your case, and explain why it should lead the judges to conclude that you are entitled to relief.

Use additional pages as needed.

ARGUMENTS

I.

(1)

Standard of Review:

(2)

Preservation of Error:

(3)

Analysis:

(4)

**Relief Requested Section
And Signature**

What you must do:

- (1)** You must provide a concluding paragraph that explains to the Court of Appeals judges what you want them to do. **MCR 7.212(C)(8)** Examples of relief you might request are:

Based on the analysis in this brief, defendant-appellant requests this Court to reverse his conviction for armed robbery, and remand to the trial court for a new trial.

or

Based on the above analysis, defendant-appellant requests this Court to reverse his sentence, and remand to the trial court for resentencing without consideration of his prior convictions.

- (2)** You must sign the brief or application. **MCR 7.212(C)(9)**

You may photocopy the form on the facing page and type or print legibly the relief you request and sign your name in the shaded areas provided.

RELIEF REQUESTED

(1)

[Redacted area]

(2)

[Redacted area]

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Appeals from Civil Judgments/Orders

There are two (2) ways you can file an appeal from a civil judgment or order: 1) claim of appeal by right, and 2) application for leave to appeal.

What you should do:

1. Review and determine whether you are able to meet the criteria for filing a claim of appeal first, because the Court of Appeals must review and decide claims on the merits.

Claim of Appeal Section - - - - -67

2. If you cannot meet the criteria for filing a claim of appeal, then review and determine whether you are able to meet the criteria for filing an application for leave to appeal.

Application for Leave Section - - - - -91

3. If you cannot meet the criteria for filing either a claim of appeal or an application for leave to appeal, then you cannot file an appeal in the Court of Appeals.

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Appeals from Civil Judgments/Orders

Claim of Appeal

Appeals from Civil Judgments/Orders

Claim of Appeal

WHO May Appeal?

Only an “aggrieved” party may file a claim of appeal. **MCR 7.203(A)** You are aggrieved if the lower court or administrative agency entered a judgment or order that invaded or prejudiced your legal rights or monetary interest in the case. ***Grace Petroleum Corp v Public Service Comm*, 178 Mich App 309, 312-313 (1989)** To be a “party,” you must generally have been a party in the case in the lower court or administrative agency. You may not file an appeal on behalf of a spouse, other relative or friend.

WHAT May you Appeal?

You may file a claim of appeal from the following circuit court judgments or orders:

1. The first judgment or order that decides all the claims and liabilities of all the parties. **MCR 7.202(6)(a)(i)**
2. A postjudgment order affecting the custody of a minor child in a domestic relations action. **MCR 7.202(6)(a)(iii)**
3. A postjudgment order for attorney fees and costs. **MCR 7.202(6)(a)(iv)**
4. An order denying governmental immunity to a governmental party. **MCR 7.202(6)(a)(v)**
5. A probate court final order affecting your rights or interests in an estate or trust. **MCL 600.861 MCR 5.801(B)**

NOTE: Appeals of items 2 – 4 are limited to the one issue noted, not everything that may have been in the order.

You may file a claim of appeal from the following administrative agency orders:

- Certain Michigan Public Service Commission orders **MCL 462.26**
- Tax Tribunal final orders **MCL 205.753**
- Michigan Employment Relations Commission final orders **MCL 423.16 & 23**
- Certain health profession disciplinary subcommittee final decisions **MCL 333.16237**

WHEN Must You File Your Appeal?

1. You must file your claim of appeal within 21 days after entry of the judgment or order you are appealing, **MCR 7.204(A)(1)(a)**
or
2. If you filed a motion for new trial, reconsideration, or other postjudgment relief,
 - You must have filed the motion within 21 days after entry of the judgment or order appealed or obtained a timely extension, **and**
 - You must file the claim of appeal within 21 days after entry of the judgment or order denying the motion, **MCR 7.204(A)(1)(b)****or**
3. In a termination of parental rights case under the Juvenile Code, if you requested appointment of appellate counsel in the circuit court within 14 days after entry of the judgment or order appealed,
 - You may file your claim of appeal within 14 days after entry of the order denying appointment of counsel, **or**
 - You may file a postjudgment motion within 14 days after entry of the order denying appointment of counsel, and then file the claim of appeal within 14 days after entry of the judgment or order denying the motion,**or**
4. In a termination of parental rights case under the Juvenile Code, if you filed a postjudgment motion within 14 days after the entry of the judgment or order appealed or obtained a timely extension,
 - You may file your claim of appeal within 14 days after entry of the order denying your postjudgment motion, **or**
 - You may request appointment of appellate counsel within 14 days after your motion for postjudgment relief is denied, and then file your claim of appeal within 14 days after your request for appointment of counsel is denied.**or**
5. As provided by a statute governing your specific type of case.

MCR 7.204(A)(1)

WHERE Must You File Your Appeal?

You must file your appeal by mail or in person (no faxes) at one of the four (4) clerk's offices in this state. **MCR 7.201(B)(2)** The addresses for those offices are listed on page i of this manual. However, at this time all claims are being processed in the **Lansing** office, so it would be most efficient to send your claim there.

NOTE: Your appeal is not "filed" until it has been received by a clerk of the Court of Appeals. **MCR 7.202(2)&(4)** That means that if you mail your documents, they are not yet "filed" when you place them in a mailbox. They are filed when they reach the Court of Appeals. The clerk's office will stamp all the documents it receives with the date and time of their arrival.

HOW Must You File Your Appeal?

You must file the following items to correctly submit a claim of appeal:

1. Claim of appeal form. **MCR 7.204(B)(1) & (D)**
2. A copy of the judgment or order you are appealing. **MCR 7.204(C)(1)**
3. A copy of the court reporter's certificate stating that you have ordered and secured payment for the transcript, **or**
A written statement signed by you that the transcript has been ordered (a copy of a letter sent to the court reporter ordering the transcript would suffice), **or**
A statement that there is no record to be transcribed.
MCR 7.204(C)(2)
4. A proof of service stating that you have provided all other parties in the case with a copy of the claim of appeal and all other documents you filed with the claim.
MCR 7.204(C)(3) & (F)(2)
5. A copy of any bond you filed in the circuit court. **MCR 7.204(C)(4)**
6. A copy of the current lower court register of actions for your case. **MCR 7.204(C)(5)**
7. A jurisdictional checklist. **MCR 7.204(C)(6)**
8. A check or money order for \$375 to cover the entry fee. **MCR 7.204(B)(2)** If you cannot afford to pay the entry fee, then you must file a motion to waive fees, along with an affidavit of indigency and, if you are incarcerated, a prisoner account statement for the past 12 months. **MCR 7.202(3)**

NOTE: If you are incarcerated, MCL 600.2963 requires that you pay the entire filing fee for an appeal. However, you may file a motion to waive fees, which will trigger the calculation of an initial partial fee. You will then receive an order which will state the amount of the initial partial fee you must pay for this Court to accept your appeal. If you timely pay the initial partial fee, the appeal will proceed. The Department of Corrections will be directed to withdraw an amount from your prisoner account each month until the entire \$375 has been paid.

A copy of each of the above forms with instructions on how to fill each out are provided on the following pages. Please note that some of the following instructions and forms mention only the “Circuit Court.” If you are appealing a case from the probate court or an administrative agency (tribunal), just substitute the appropriate title of the court or tribunal.

What happens if I don’t file it right?

If you omit one of the above documents, the clerk’s office in the Court of Appeals will send you a letter explaining what is defective about your filing, and give you 21 days to correct it. **MCR 7.201(B)(3)** For example, if you wrote a letter to the circuit court asking for a copy of the register of actions, but that court has not sent them before you must file your appeal, then provide a copy of that letter to the Court of Appeals with your claim. You will receive a defect letter from the Court of Appeals, giving you 21 days to send the register of actions. By then, you should have received them and can forward them to the Court of Appeals.

Claim of Appeal Form

What you must do:

You may photocopy the form on the facing page and simply type or print legibly the following information in the shaded areas provided. **NOTE:** Leave the COA No. line blank. The Court of Appeals will assign that number.

- (1) The name(s) of the plaintiff(s) in the circuit court action, as it/they appeared in the circuit court caption.
- (2) If you were the plaintiff in the circuit court, then put the word “Appellant” in the shaded area. Otherwise, put the word “Appellee(s).”
- (3) Your case number in the circuit court. It should look something like “2000-123456-DM.” You can obtain this number from any of your circuit court case documents.
- (4) The name(s) of the defendant(s) in the circuit court action, as it/they appear in the circuit court caption.
- (5, 6) If you were the defendant in the circuit court, then put the word “Appellant” in the first shaded area. Otherwise, put the word “Appellee(s).” If this case involves the custody of a child, write the word “CUSTODY” in capital letters in the shaded area under the lower court number. **MCR 7.204(D)(3)**
- (7,8) Write your name as it appears in the caption in the shaded area. Then check the box beside either “plaintiff” or “defendant,” as indicated in the caption.
- (9) The first shaded area on this line is for the date on which the judgment or order you are appealing was entered.
- (10) The second shaded area on this line is for the name of the lower court or administrative agency which entered the judgment or order you are appealing. **MCR 7.204(D)(1)**
- (11) The current date.
- (12) You must sign the claim of appeal.
- (13) Type or print legibly your full name, address and telephone number. If you are incarcerated, this would include your prisoner number and the name and address of the facility where you are living. [Incarcerated persons must place their prisoner number on all documents filed in this Court so that return correspondence will be routed back to them properly.] **Please send this Court a change of address notification immediately if you move.** **MCR 7.204(D)(2)**

STATE OF MICHIGAN
IN THE COURT OF APPEALS

(1) _____.,
(2) _____ Plaintiff-_____, COA No. _____
(3) v _____ Lower Ct/Tribunal. No. _____
(4) _____.,
(5,6) _____ Defendant-_____. _____.

CLAIM OF APPEAL

(7,8) _____, ☐ plaintiff,
_____, ☐ defendant, claims an appeal from the
(9,10) judgment/order entered _____, in the _____.

(11) Date: _____
(12) _____
(13) _____

_____.

Judgment or Order Appealed

You must provide a copy of the judgment or order you are appealing. This may be in many forms: an opinion with the words “IT IS SO ORDERED” at the end, an opinion followed by an order, a judgment of divorce, a summary disposition order, and many others. The circuit court should have provided a copy to you, or you can obtain one from the clerk’s office of the circuit court.

What you must do:

You need only provide the Court of Appeals with a copy of the judgment or order. The facing page shows an example of an order granting summary disposition.

It would also be helpful to provide the Court of Appeals with a copy of any orders entered prior to the final order, if they are at issue or dispose of the claims of any other parties. Also, it would be helpful to include a copy of any order that decided a postjudgment motion.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF IOSCO

SUSAN DOE,
Plaintiff,

vs.

HON. R. [REDACTED]
Case No.: 99-05555 i-NH

JOHN SMITH and GEORGE SMITH

Defendants.

HAROLD DOE (P12345)
Attorney for Plaintiff
3000 Town Ctr.,
Southfield, MI 48075
(248) 555-1040

REGINALD POE (P54321)
Attorney for Defendants
One Michigan Ave.
Detroit, MI 48226
(313) 555-3214

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY DISPOSITION

At a session of said Court, held in the City
of Tawas, County of Iosco, State of Michigan,
on: OCT 9, 1999

PRESENT THE HONORABLE: J. R. [REDACTED]
Circuit Judge

UPON the filing of Defendants' Motion for Summary
Disposition based upon expiration of the Statute of Limitations,
plaintiff having responded to said motion, and oral argument
having been entertained;

IT IS HEREBY ORDERED that Defendants' Motion for Summary
Disposition is granted for the reasons stated on the record.

A TRUE COPY

OCT 11 1999
SN

[REDACTED]
CIRCUIT COURT JUDGE

10/9/99

DET2:459697 23rd CIRCUIT COURT²⁻

RECEIVED
1999 NOV - 1 PM 3:24
COURT OF APPEALS
CLERK'S OFFICE
EARL L. BROWER, CIR

Proof of Ordering Transcripts

Any time there is a hearing in the circuit court, a court reporter makes notes or a recording of everything that was said. In appeals arising solely from summary disposition orders, you may waive the transcript. **AO 2004-5** In all other cases, you must order the transcripts of every court hearing from the court reporter. **MCR 7.210(B)(1)** You must either pay for them or obtain a circuit court order declaring you indigent and providing them at public expense. Generally, the court reporter has 91 days to provide them. **MCR 7.210(B)(3)(b)** However, within 7 days of a transcript being ordered, the court reporter must furnish a certificate that states that the transcript has been ordered, payment has been secured, and when it will be filed. **MCR 7.210(B)(3)(a)**

If there were no court hearings, or you are appealing from an administrative agency which did not hold or record a hearing, you must file a statement indicating that there are no transcripts.

What you must do:

If there will be no transcripts, provide a statement that there are no transcripts.

If the appeal arises solely from a summary disposition order and you wish to waive the transcript, provide a statement that you are waiving it.

If you have already received the court reporter's certificate for all the transcripts in your case, you may simply make a copy of the certificate to send to the Court of Appeals. If you do not yet have the court reporter's certificate, then either provide a statement that the transcript has been ordered, or a copy of the letter you wrote to the court reporter ordering the transcript.

A form for a statement regarding transcript is provided on the facing page. You may photocopy the form and simply type or print legibly the following information in the **shaded** areas provided.

- (1) The caption as it appears on the claim of appeal form.
- (2) Check whichever box applies to your case.
- (3) If you checked the box indicating that you have ordered the transcript, insert the date on which you ordered the transcript from the court reporter.
- (4) The current date.
- (5) Your signature.
- (6) Type or print legibly your full name, address and telephone number. If you are incarcerated, this would include your prisoner number and the name and address of the facility where you are living.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

_____,

Plaintiff-_____,

COA No. _____

(1)

v

Lower Ct/Tribunal No. _____.

_____,

Defendant-_____.

STATEMENT REGARDING TRANSCRIPT

☐ I am waiving the transcript in this appeal arising solely from a summary disposition order.

(2)

☐ There are no transcripts in this case.

☐ Appellant ordered the transcript from all lower court hearings related to the

(3)

above case on _____.

(4)

Date: _____

(5)

(6)

Proof of Service

You must serve (mail or hand deliver) one copy of the claim of appeal and all the attached documents on all parties in your circuit court case. You must then provide proof of that service to the Court of Appeals.

What you must do:

You may photocopy the form on the facing page and type or print legibly the following information in the shaded areas provided. **NOTE:** Leave the COA No. line blank. The Court of Appeals will assign that number.

- (1) The caption as it appears on the claim of appeal form.
- (2) The county in which the person who actually served these documents was located. For example, if you mailed these documents from your home, you would put the county in which your home is located.
- (3) The first shaded area on this line is for the date on which the documents were served.
- (4) The second shaded area on this line is for you to state how the documents were served: put the word “mailed” if they were sent in the mail, or put the word “hand-delivered” if they were personally handed to the person served.
- (5) State the full names and addresses of all the parties or their attorneys to whom the documents were mailed or hand-delivered. If a party is represented by an attorney, the documents must be served on the attorney, and you must indicate which party the attorney represents.
- (6) List any documents that were filed with your claim of appeal and served on the other parties that are not already listed. For example, bond, motion to waive fees, affidavit of indigency, prisoner account statement, etc.
- (7) The current date.
- (8) The signature of the person who actually served the documents. If you served the documents yourself, then you must sign.
- (9) Type or print legibly the full name, address and telephone number of the person who served the documents.

NOTE: You must also provide the circuit court with a copy of these documents. **MCR 7.204(E)**

STATE OF MICHIGAN
IN THE COURT OF APPEALS

_____,

Plaintiff-_____,

COA No. _____

(1)

v

Lower Ct/Tribunal No. _____.

_____,

Defendant-_____.

PROOF OF SERVICE

State of Michigan)

)

(2)

County of _____)

(3,4)

I affirm that on _____, I _____ one copy of

(5)

the following documents on: _____.

_____ :

Claim of Appeal, Judgment/Order Appealed, Statement Regarding
Transcript, Proof of Service, Register of Actions, Jurisdictional Checklist,

(6)

_____.

(7)

Date: _____

(8)

(9)

_____.

Bond

What you must do:

You must provide the Court of Appeals with a copy of any bond documenting any money you were required to pay as a condition for taking the appeal. Either you or your attorney would have filled this out and filed it in the lower court. An example of the first page of a bond is on the facing page.

Approved, SCAO STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	Original - Trial court 1st copy - Appellate court BOND ON APPEAL	OSM Code: BOA 2nd copy - Appellee 3rd copy - Appellant 166c 1/90 CASE NO.
Court address		Court telephone no.

Plaintiff/Petitioner name(s) and address(es) <input type="checkbox"/> Appellant <input type="checkbox"/> Appellee	v	Defendant/Respondent name(s) and address(es) <input type="checkbox"/> Appellant <input type="checkbox"/> Appellee
Attorney, bar no., address, and telephone no.		Attorney, bar no., address, and telephone no.
<input type="checkbox"/> Probate In the matter of _____		
Total court judge	Party for whom judgment entered	Party against whom judgment entered
Amount of judgment		
Amount of bond	Type of bond <input type="checkbox"/> personal <input type="checkbox"/> cash <input type="checkbox"/> surety	Principal (Appellant)
Type or print name(s), address(es), and telephone number(s) of surety(ies)		

The principal and surety, if applicable, are bound jointly and severally to the appellee or the court in the sum stated if the principal fails to perform any of the following obligations:

1. diligently prosecute this appeal to decision.
2. if the reviewing court affirms the lower court judgment or the appeal is dismissed or discontinued, perform or satisfy the judgment or order appealed including costs and interest.
3. in an action involving the possession of land or judgment for foreclosure of a mortgage or land contract, pay the amount stated in the appealed judgment, appellate costs, and interest, and pay any damages from the time of forcible entry, the detainer, the notice to quit, or demand for possession.
4. In a juvenile/criminal case, the juvenile or criminal shall also promise to:
 - a. surrender to the sheriff or other custodial authority if the sentence/disposition appealed is affirmed or the appeal is dismissed;
 - b. if the judgment or order appealed is other than incarceration, to perform and comply with the judgment or order if it is affirmed on appeal or if the appeal is dismissed;
 - c. to appear in the trial court if the case is remanded for retrial or further proceedings or if a conviction is reversed and retrial is allowed;
 - d. to remain in Michigan unless the court gives written approval to leave; and
 - e. to notify the trial court clerk of a change of address.
5. perform all other acts required by law, including:

Date _____	Signature of principal _____
Surety _____	Surety _____
(continued on reverse)	

MC 58 (8/89) BOND ON APPEAL MCR 7.101(C)(2)(A), (H), MCR 7.204(E), MCR 7.209(E)

Circuit Court Register of Actions

What you must do:

You must obtain a copy of the circuit court register of actions for your case. You can do that by sending a letter requesting them to the circuit court clerk at the proper address, giving him/her the circuit court case number and name. Also, you will probably have to either provide the clerk with a copying fee, **or** advise him/her that you are indigent and are requesting the register of actions for appeal purposes.

The register of actions have already been compiled by the circuit court, so you need only send the Court of Appeals a copy. An example of what the first page might look like is on the facing page. Each court has its own format, however, so yours may look somewhat different.

CLOSED DMO
98-001066-NH JUDGE ERNST
COUNTY 35

CASE FILE SUMMARY 10/21/99 PAGE
FILE 05/19/98 DISPOSE 10/09/99 CLOSE 10/11/9
JDF

P 001 SUSAN DOE

VS D 001 JOHN SMITH
DISPOSITION 10/09/99 OJS
SERVICE/ANS 11/21/97 ANS

D 002 GEORGE SMITH

GAYLORD MI
DISPOSITION 10/09/99 OJS
SERVICE/ANS 11/21/97 ANS

IP001 BLUE CROSS BLUE SHIELD,,
ATTY: 07/20/98

NUM	DATE	JUDGE	CHG/PTY	EVENT DESCRIPTION/COMMENTS	
19	11/21/97	ERNST	D 001	ANSWER FILED	CLK MEV
20			D 002	ANSWER FILED	CLK MEV
1	05/19/98		P 001	SUMMONS AND COMPLAINT FILED	CLK NJI
				RECEIPT# 00047317 AMT \$100.00	
				STIP & ORDER FOR CHANGE OF	CLK
				VENUE FROM OTSEGO CO. TO	CLK
				IOSCO CO.	CLK
2			P 001	RE-ASSIGNED PRO-PER TO ROONEY	CLK NJI
3			P 001	JURY DEMAND FILED	CLK MEV
				RECEIPT# 00047513 AMT \$60.00	
4			D 001	APPEARANCE AND NOTICE	CLK MEV
5			D 002	APPEARANCE AND NOTICE	CLK MEV
6				DEFENDANTS NTC OF TAKING	CLK MEV
				DEPOSITION	CLK
7				DEFENDANTS MO FOR CNG OF VENUE	CLK MEV
				W/AFFIDAVIT IN SUPPORT OF	CLK
				MO & NOTICE	CLK
8			D 001	ANSWER TO COMPLAINT, AFFIRMA-	CLK MEV
				TIVE DEFENSES, FURTHER ANS.,	CLK
				NOTICE OF MO FOR S.D. IN FUR-	CLK
				THER ANSWERS, AFF IN SUP OF RE-	CLK
				-LIANCE UPON PLTF'S DEMAND FOR	CLK
				J.T., INTERROGATORIES, REQ FOR	CLK
				PRODUCTION OF MED/EMP INFO NTC	CLK
				OF TAKING DEP & AFF OF SRV	CLK
9			D 002	ANSWER, REQ FOR PRODUC OF MED	CLK MEW
				INFO, REQ FOR PROD OF EMPLOY	CLK
				INFO, AFF OF SRV (2)	CLK
				PROOF OF SRV FILED	CLK MEW
10				NTC TO APPEAR FOR P.T. HRG	CLK MEW
11				NTC OF INTENT TO DISMISS FOR	CLK MEW
12				NO PROGRESS W/PRF OF MAIL.	CLK
13				STIP & ORDER FOR CHG OF VENUE	CLK MEW
14				CORRESPON FROM EVELYN M. PRATT	CLK MEW
				TO VERLIN R. NAFZIGER RE: WHY	CLK
				CASE NOT TRANS. PRIOR	CLK
15				CORRESPON FROM EVELYN M. PRATT	CLK MEW
				TO IOSCO CLERK RE: FILE CONT	CLK
				AND J.D. CHECK	CLK
16				PROOF OF MAILING RE: ORIGINAL	CLK MEW
				FILE FROM OTSEGO COUNTY CLERK	CLK

Jurisdictional Checklist

The jurisdictional checklist is a form devised by the Court of Appeals to help you make sure you have filed all the necessary documents to perfect your claim of appeal. A copy of the form is provided on the facing page.

What you must do:

Place a check mark in the box beside every item that you are filing with the Claim of Appeal. If you have followed the instructions on the preceding pages and page 86, you should be able to check a box for every category except "Track Designation" if this is not a summary disposition case. If you cannot, then either the Court of Appeals does not have jurisdiction over your claim of appeal, or your filing is defective in some way.

If the Court of Appeals does not have jurisdiction over your claim of appeal, it will dismiss your claim. You could then determine whether you meet the criteria for filing an application for leave to appeal (see page 91).

If your filing is defective because you did not provide a necessary document, the clerk's office in the Court of Appeals will write you a letter explaining what is missing, and give you 21 days to correct it. **MCR 7.201(B)(3)** If you do not correct it, the claim of appeal will be dismissed. If you do correct it, the claim of appeal will proceed.

Trial Court/Tribunal Name:	Court of Appeals, State of Michigan Jurisdictional Checklist	CASE NO. Trial Court/Tribunal: Court of Appeals:
----------------------------	---	--

Case Name: _____ v _____

INSTRUCTIONS: Please complete this checklist and file with your claim of appeal. **ALL** of the numbered items are required. Check each box as you confirm that each item is being filed.

- ☐ 1. A **signed** claim of appeal form showing the correct lower court number(s). [MCR 7.204(B)(1) & (D).]
- ☐ 2. A filing fee of \$375.00 or appropriate fee substitute. [MCR 7.202(3) & 7.204(B)(2).] (Where multiple lower court or tribunal numbers are involved, an additional filing fee may be required. Appellants will be advised of any additional amount required.)
- ☐ 3. A copy of the order you are appealing. [MCR 7.204(C)(1).] (This is the order deciding the merits and not an order denying reconsideration, new trial, or other post-judgment relief.)
- ☐ 4. Evidence that the necessary transcript has been ordered. [MCR 7.204(C)(2).] (Only one item from a through e is required).
- ☐ a. The complete transcript has been ordered. [MCR 7.210(B)(1)(a).]
- ☐ b. This appeal is from a probate court proceeding which does not require a complete transcript. [MCR 7.210(B)(1)(b).]
- ☐ c. A motion has been filed in the lower court or tribunal for submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(c).]
- ☐ d. The parties have stipulated to submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(d).]
- ☐ e. The parties have stipulated to a statement of facts. [MCR 7.210(B)(1)(e).]
- ☐ 5. Proof of service demonstrating that all other parties have been served. [MCR 7.204(C)(3).] (Even if a party is not an appellee, they must be served.)
- ☐ 6. A **current** register of actions from the lower court or tribunal. [MCR 7.204(C)(5).]

Finality of Order Being Appealed (Check the box that demonstrates your claim of appeal is by right. If neither applies, you do not have an appeal by right.)

- ☐ The claim of appeal is from an order defined as a final order by MCR 7.202(6) or MCR 5.801(B)(1). [MCR 7.203(A)(1).] Please specify which category of final order applies: _____
- ☐ The claim of appeal is from an order which is designated by statute, court rule, or case law as an order appealable by right to the Court of Appeals. Please specify the authority under which you have an appeal by right: _____

Track Designation [Administrative Order 2004-5]

- ☐ This appeal involves only summary disposition. The nature of the action is: _____

Date

Preparer's Signature

7/04

Filing Fees

What you must do:

You must pay the entry or filing fee before the Court of Appeals can review your claim of appeal. **MCR 7.204(B)(2)** It is currently \$375. You may pay the fee by providing a check or money order in that amount made payable to “Court of Appeals.”

If you are indigent and cannot afford the fee, you may file a motion to waive fees instead. **MCR 7.202(3)** The Court of Appeals may grant the motion so that you will not have to pay any filing fee, or it may deny your motion and require that you pay all or just a portion of the filing fee. See the Motion to Waive Fees section on pages 153 - 159 of this manual for directions and forms to file a motion to waive fees.

End of claim of appeal section.

Docketing Statement and Appellant's Brief

The documents described on the previous pages will initiate your claim of appeal with the Court of Appeals. You may also later need to file a docketing statement and an appellant's brief, outlining the issues in your case that you want the Court of Appeals judges to review and decide.

Docketing Statement

WHEN/WHERE/HOW Must you File the Docketing Statement?

If your appeal is solely from a summary disposition order, you do not need to file a docketing statement. Otherwise, you must file a copy of the docketing statement within 28 days after filing the claim of appeal. **MCR 7.204(H)** The form for the docketing statement is on pages 161 - 163 of this manual. You must fill it out as completely as possible, and send it to the same place that you mailed the claim of appeal. Refer to page 70 for details regarding filing.

Appellant's Brief

WHEN Must you File the Brief?

If this is a child custody, termination of parental rights, or summary disposition case, your appellant's brief is due 28 days after the claim of appeal has been filed or the timely ordered transcripts have been filed with the circuit court, whichever is later, or as ordered by the Court. **MCR 7.212(A)(1)(a)(i) and AO 2004-5**

In all other cases, your appellant's brief is due 56 days after the claim of appeal has been filed, or the timely ordered transcripts have been filed with the circuit court, whichever is later. **MCR 7.212(A)(1)(a)(iii)**

WHERE Must you File the Brief?

You may file your brief in the same place that you filed your claim of appeal. Refer to page 70 for details regarding filing.

HOW Must you File the Brief?

You must file five (5) copies of your brief, which must have the following general format characteristics: **MCR 7.212(A)(1)(a) & (B)**

1. At least 1” margins the top, bottom, and both sides.
2. Printed legibly or typed in not smaller than 12-point type.
3. Double-spaced. Footnotes and quotations can be single-spaced.
4. No more than 50 pages (35 in summary disposition cases), not counting indexes and appendices. The pages must be numbered consecutively. You may number the pages of the indexes at the beginning of the brief in small roman numerals (i.e. i, ii, iii, etc.) and then begin the numbers of the remainder of the brief, starting with the Statement of Facts, in Arabic numbers (i.e. 1, 2, 3, etc.).

There are several sections necessary in a brief. The first is:

Brief Cover Page**What you must do:**

You may photocopy the form on the facing page and simply type or print legibly the following information in the **shaded** areas provided.

- (1) The caption as it appears on your claim of appeal, except that now you should fill in the Court of Appeals number.
- (2) Check whether or not you are requesting oral argument. If you are incarcerated, it is not likely that you will be able to appear and argue, so you would not request it.
- (3) Although not required, it is worthwhile to put your name and address on the cover page.

MCR 7.212(C)(1)

Brief directions and forms continued on page 113.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

_____.

Plaintiff-_____.

COA No. _____.

(1)

v

Lower Ct/Tribunal No. _____.

_____.

Defendant-_____.

(2)

ORAL ARGUMENT

☐ REQUESTED

☐ NOT REQUESTED

APPELLANT’S BRIEF

(3)

This page is blank.

Appeals from Civil Judgments/Orders

Application for Leave to Appeal

WHO May Appeal?

You must have “standing” to file an application for leave to appeal. **Grace Petroleum Corp v Public Service Comm**, 178 Mich App 309, 312 (1989) Generally, that means that the requirement for filing an application is the same as for filing a claim: that is, only an “aggrieved” party may file an appeal. **MCR 7.203(A)** You are aggrieved if the lower court or administrative agency entered a judgment or order which invaded or prejudiced your legal rights or monetary interests in the case. **Grace, Supra** To be a “party,” you must generally have been a party in the case in the lower court or tribunal. You may not file an appeal on behalf of a spouse, other relative or friend.

WHAT May you Appeal?

You may file an application for leave to appeal from the following: **MCR 7.203(B)**

1. An interlocutory order, meaning an order that was entered in the circuit court case, but is not a final judgment or order disposing of the whole controversy. **MCR 7.203(B)(1)**
2. A circuit court final judgment or order from an appeal from the district or probate court, or administrative agency (tribunal). **MCR 7.203(B)(2)**
3. A final order of the Worker’s Compensation Appellate Commission. **MCR 7.203(B)(3)** **MCL 418.861a**
4. Certain probate court orders. **MCR 5.801(C)**
5. A judgment or order from which you could have had an appeal by right, but the claim of appeal was not timely filed. **MCR 7.203(B)(5)** In this case you must file a delayed application for leave to appeal. **MCR 7.205(F)(1)**

WHEN Must you Appeal?

In a worker's compensation case, you must file the application within 30 days of entry of the final order you are appealing. **MCL 418.861a**

In other cases:

To file a timely application for leave to appeal, you must file the application within 21 days after entry of the judgment or order you are appealing. **MCR 7.205(A)**

To file a delayed application for leave to appeal in a termination of parental rights case, you must file the application within 63 days after entry of the judgment or order you are appealing. **MCR 7.205(F)(5); MCR 3.993(C)(2)**

To file a delayed application for leave to appeal, you must file the application within 12 months after entry of the judgment or order you are appealing. **MCR 7.205(F)(3)**

WHERE Must You File Your Appeal?

You must file your appeal by mail or in person (no faxes) at one of the four (4) clerk's offices in this state. **MCR 7.201(B)(2)** The addresses for those offices are listed on page i of this manual.

NOTE: Your appeal is not "filed" until it has been received by a clerk of the Court of Appeals. **MCR 7.202(2)&(4)** That means that if you mail your documents, they are not yet "filed" when you place them in the mailbox. They are filed when they reach the Court of Appeals. The clerk's office will stamp all the documents it receives with the date and time of their arrival.

HOW Must You File Your Leave Application?

You must file the following documents to correctly submit an application for leave to appeal:

1. Five (5) copies of an application for leave to appeal, one signed. **MCR 7.205(B)(1)** It must have the following general format characteristics: **MCR 7.212(B)**

- At least 1" margins on the top, bottom, and both sides.
- Printed legibly or typed in not smaller than 12-point type.
- Double-spaced. Footnotes and quotations can be single-spaced.
- No more than 50 pages (35 in summary disposition cases), not counting indexes and appendices. The pages must be numbered consecutively. You may number the pages of the indexes at the beginning of the brief in small roman numerals (i.e. i, ii, iii, etc.) and then begin the numbers of the remainder of the brief, starting with the Statement of Facts, in Arabic numbers (i.e. 1, 2, 3, etc.).

2. Five (5) copies of the judgment or order you are appealing, along with any opinion or findings of fact the lower court or administrative agency issued. In addition, five (5) copies of any opinion or findings that the lower court or administrative agency reviewed in making its decision, such as the opinion of the district court if your initial case began there. **MCR 7.205(B)(2)**
3. Five (5) copies of the current lower court or administrative agency register of actions. **MCR 7.205(B)(2)**
4. If the appeal involves an administrative agency action, a copy of your letter or some other proof that the agency record has been requested. **MCR 7.205(B)(3)**
5. One (1) copy of those portions of the transcripts that substantiate the issues you raise in the application. **MCR 7.205(B)(4)**
6. A proof of service stating that you have provided all other parties in your case with a copy of the application for leave to appeal, and all the other documents you filed with the application. **MCR 7.205(B)(6)**
7. If this is a delayed application, five (5) copies of a statement explaining the reason(s) for the delay. **MCR 7.205(F)(1)**
8. A check or money order for \$375 to cover the entry fee. **MCR 7.205(B)(7)** If you cannot afford to pay the entry fee, then you must file a motion to waive fees, along with an affidavit of indigency and, if you are incarcerated, a prisoner account statement for the past 12 months. **MCR 7.202(3)**

A copy of each of the above forms with instructions on how to fill each out are provided on the following pages.

What happens if I don't file it right?

If you omit one of the above documents, the clerk's office in the Court of Appeals will send you a letter explaining what is defective about your filing, and give you 21 days to correct it. **MCR 7.201(B)(3)** For example, if you wrote a letter to the circuit court asking for a copy of the register of actions, but that court has not sent them before you must file your appeal, then provide a copy of the letter to the Court of Appeals with your claim. You will receive a defect letter from the Court of Appeals, giving you 21 days to send the register of actions. By then, you should have received them and can forward them to the Court of Appeals.

Application For Leave to Appeal Form

There are several sections in an application for leave to appeal. The first is the:

Application Cover Page

What you must do:

You may photocopy the form on the facing page and simply type or print legibly the following information in the shaded areas provided. **NOTE:** Leave the COA No. line blank. The Court of Appeals will assign that number.

- (1) The name(s) of the plaintiff(s) in the lower court or tribunal action, as it/they appear in that caption.
- (2) If you were the plaintiff in the lower court or tribunal, then put the word “Appellant” in the shaded area. Otherwise, put the word “Appellee(s).”
- (3) Your case number in the lower court or tribunal. It might look something like “2000-123456-DM.”
- (4) The name(s) of the defendant(s) in the lower court or tribunal action, as it/they appear in that caption.
- (5) If you were the defendant in the lower court or tribunal, then put the word “Appellant” in the shaded area. Otherwise, put the word “Appellee(s).”
- (6) Check the appropriate box indicating whether you are filing a timely or delayed application.
- (7) The current date.
- (8) Your signature. **MCR 7.205(B)(1)**
- (9) Type or print legibly your full name, address and telephone number. If you are incarcerated, this would include your prisoner number and the name and address of the facility where you are living. [Incarcerated persons must place their prisoner number on all documents filed in this Court so that return correspondence will be routed back to them properly.] **Please send this Court a change of address notification immediately if you move.**

The directions and forms to complete the application are on pages 113 – 127. Then return to page 96 and attach the documents on the following pages.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

(1) _____.,
(2) _____ Plaintiff-_____, COA No. _____
(3) v _____ Lower Ct/Tribunal No. _____
(4) _____.,
(5) _____ Defendant-_____.

☐ APPLICATION FOR LEAVE TO APPEAL

(6) ☐ DELAYED APPLICATION FOR LEAVE TO APPEAL

(7) Date: _____
(8) _____
(9) _____

Judgement or Order Appealed

The judgment or order you are appealing should have been provided to you by the circuit court or administrative agency. If not, you can obtain a copy from the clerk's office of the circuit court or administrative agency which entered the order. It may be in many forms: an opinion with the words "IT IS SO ORDERED" at the end, a judgment of divorce, a summary disposition order, an administrative agency opinion and order, etc.

What you must do:

You need only provide the Court of Appeals with five (5) copies of the judgment or order you are appealing, and any other opinion or findings of fact that the circuit court or administrative agency entered or reviewed in making its decision. The facing page shows an example of an order granting summary disposition.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF IOSCO

SUSAN DOE,
Plaintiff,
vs.
JOHN SMITH and GEORGE SMITH
Defendants.

HON. R. [REDACTED]
Case No.: 99-05555 i-NH

HAROLD DOE (P12345)
Attorney for Plaintiff
3000 Town Ctr.,
Southfield, MI 48075
(248) 555-1040

REGINALD POE (P54321)
Attorney for Defendants
One Michigan Ave.
Detroit, MI 48226
(313) 555-3214

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY DISPOSITION

At a session of said Court, held in the City
of Tawas, County of Iosco, State of Michigan,
on: OCT 9, 1999

PRESENT THE HONORABLE: J. R. [REDACTED]
Circuit Judge

UPON the filing of Defendants' Motion for Summary
Disposition based upon expiration of the Statute of Limitations,
plaintiff having responded to said motion, and oral argument
having been entertained;

IT IS HEREBY ORDERED that Defendants' Motion for Summary
Disposition is granted for the reasons stated on the record.

A TRUE COPY

OCT 11 1999
X

[REDACTED]
CIRCUIT COURT JUDGE

10/9/99

DET2:459697 23rd CIRCUIT COURT²⁻

RECEIVED
1999 NOV -1 PM 3:24
COURT OF APPEALS
CLERK'S OFFICE
COURT REPORTER
CIR

Circuit Court Register of Actions

What you must do:

You must obtain a copy of the circuit court register of actions for your case. You can do that by sending a letter requesting them to the circuit court clerk at the proper address, giving him/her the circuit court case number and name. Also, you will probably have to either provide the clerk with a copying fee, **or** advise him/her that you are indigent and are requesting the register of actions for appeal purposes.

The register of actions have already been compiled by the circuit court, so you need only send the Court of Appeals a copy. An example of what the first page might look like is on the facing page. Each court has its own format, however, so yours may look somewhat different.

CLOSED DMO
98-001066-NH JUDGE ERNST
COUNTY 35

CASE FILE SUMMARY 10/21/99 PAGE
FILE 05/19/98 DISPOSE 10/09/99 CLOSE 10/11/9
JDF

P 001 SUSAN DOE

VS D 001 JOHN SMITH
DISPOSITION 10/09/99 OJS
SERVICE/ANS 11/21/97 ANS

D 002 GEORGE SMITH

GAYLORD MI
DISPOSITION 10/09/99 OJS
SERVICE/ANS 11/21/97 ANS

IP001 BLUE CROSS BLUE SHIELD,,
ATY: 07/20/98

NUM	DATE	JUDGE	CHG/PTY	EVENT DESCRIPTION/COMMENTS	
19	11/21/97	ERNST	D 001	ANSWER FILED	CLK MEV
20			D 002	ANSWER FILED	CLK MEV
1	05/19/98		P 001	SUMMONS AND COMPLAINT FILED	CLK NJI
				RECEIPT# 00047317 AMT \$100.00	
				STIP & ORDER FOR CHANGE OF	CLK
				VENUE FROM OTSEGO CO. TO	CLK
				IOSCO CO.	CLK
2			P 001	RE-ASSIGNED PRO-PER TO ROONEY	CLK NJI
3			P 001	JURY DEMAND FILED	CLK MEV
				RECEIPT# 00047513 AMT \$60.00	
4			D 001	APPEARANCE AND NOTICE	CLK MEV
5			D 002	APPEARANCE AND NOTICE	CLK MEV
6				DEFENDANTS NTC OF TAKING	CLK MEV
				DEPOSITION	CLK
7				DEFENDANTS MO FOR CHG OF VENUE	CLK MEV
				W/AFFIDAVIT IN SUPPORT OF	CLK
				MO & NOTICE	CLK
8			D 001	ANSWER TO COMPLAINT, AFFIRMA-	CLK MEV
				TIVE DEFENSES, FURTHER ANS.,	CLK
				NOTICE OF MO FOR S.D. IN FUR-	CLK
				THER ANSWERS, AFF IN SUP OF RE	CLK
				-LIANCE UPON PLTF'S DEMAND FOR	CLK
				J.T., INTERROGATORIES, REQ FOR	CLK
				PRODUCTION OF MED/EMP INFO NTC	CLK
				OF TAKING DEP & AFF OF SRV	CLK
9			D 002	ANSWER, REQ FOR PRODUC OF MED	CLK MEV
				INFO, REQ FOR PROD OF EMPLOY	CLK
				INFO, AFF OF SRV (2)	CLK
				PROOF OF SRV FILED	CLK MEV
10				NTC TO APPEAR FOR P.T. HRG	CLK MEV
11				NTC OF INTENT TO DISMISS FOR	CLK MEV
12				NO PROGRESS W/PRF OF MAIL.	CLK
13				STIP & ORDER FOR CHG OF VENUE	CLK MEV
14				CORRESPON FROM EVELYN M. PRATT	CLK MEV
				TO VERLIN R. NAFZIGER RE: WHY	CLK
				CASE NOT TRANS. PRIOR	CLK
15				CORRESPON FROM EVELYN M. PRATT	CLK MEV
				TO IOSCO CLERK RE: FILE CONT	CLK
				AND J.D. CHECK	CLK
16				PROOF OF MAILING RE: ORIGINAL	CLK MEV
				FILE FROM OTSEGO COUNTY CLERK	CLK

Proof of Ordering Administrative Record

If you are appealing directly from an administrative agency decision (such as the Worker's Compensation Appellate Commission), or from a circuit court decision in an appeal from an administrative agency, you must order the administrative record to be sent to the Court of Appeals. You must file proof that you ordered the record with your application.

What you must do:

You may either provide a statement of ordering the administrative record, or send a copy of the letter or other written document that you sent to the administrative agency to order the record. A form for the statement of ordering the administrative record is provided on the facing page. You may photocopy the form and simply type or print legibly the following information in the **shaded** areas provided:

- (1) The caption as it appears on your application.
- (2) The date on which you ordered the administrative record.
- (3) The current date.
- (4) Your signature.
- (5) Type or print legibly your full name, address and telephone number. If you are incarcerated, this would include your prisoner number and the name and address of the facility where you are living.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

_____,

Plaintiff-_____,

COA No. _____

(1)

v

Lower Ct/Tribunal No. _____.

_____,

Defendant-_____.

STATEMENT OF ORDERING ADMINISTRATIVE RECORD

Appellant ordered the administrative record related to the above case on

(3)

_____. ..

(4)

Date: _____

(5)

(6)

Copy of Relevant Transcript

Any time there is a hearing in the circuit court, a court reporter makes notes or a recording of everything that was said.

What you must do:

If there were no court or tribunal hearings, provide a statement that there are no transcripts.

If this appeal is solely from a summary disposition order and you wish to waive the transcript, provide a statement that you are waiving it.

Otherwise, you must order from the court reporter, and send to the Court of Appeals, a copy of that portion of the transcript that substantiates or is relevant to the issues that you raise in the application. Because a court reporter has 91 days to provide a transcript **MCR 7.210(B)(3)(b)**, you may have to provide one of the substitutes described below with the application, and send a copy of the transcript as soon as it is provided. If you do not yet have the transcript, but you have the court reporter's certificate, send a copy of the certificate to the Court of Appeals. The court reporter must provide a certificate within 7 days of the transcript being ordered and payment secured. **MCR 7.210(B)(3)(a)** If you do not yet have either the transcript or the court reporter's certificate, then either provide a statement that the transcript has been ordered, or provide a copy of the letter you wrote to the court reporter ordering the transcript. **MCR 7.205(B)(4)**

A form for a statement regarding transcript is provided on the facing page. You may photocopy the form and simply type or print legibly the following information in the **shaded** areas provided.

- (1) The caption as it appears on your application.
- (2) Check whichever box applies to your case.
- (3) If you checked the box indicating that you ordered a transcript, the date on which you ordered the transcript from the court reporter.
- (4) The current date.
- (5) Your signature.
- (6) Type or print legibly your full name, address and telephone number. If you are incarcerated, this would include your prisoner number and the name and address of the facility where you are living.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

_____,

Plaintiff-_____, COA No. _____

(1)

v

Lower Ct/Tribunal No. _____.

_____,

Defendant-_____.

STATEMENT REGARDING TRANSCRIPT

- ☐ I am waiving the transcript in this appeal arising solely from a summary disposition order.
- ☐ There are no transcripts in this case.
- ☐ Appellant ordered the transcript of relevant hearings related to the above case on

(2)

(3)

_____.

(4)

Date: _____

(5)

(6)

Proof of Service

You must serve (mail or hand deliver) one copy of the application for leave to appeal and all the attached documents on all other parties in your case. You must then provide proof of that service to the Court of Appeals. **MCR 7.204(C)(3)**

What you must do:

You may photocopy the form on the facing page and type or print legibly the following information in the **shaded** areas provided.

- (1) The caption as it appears on your application.
- (2) The county in which the person who actually served these documents was located. For example, if you mailed these documents from your home, you would put the county in which your home is located.
- (3) In the first shaded area on the line, enter the date on which the documents were served.
- (4) In the second shaded area on the line, state how the documents were served: put the word “mailed” if they were sent in the mail, or put the word “hand-delivered” if they were personally handed to the person(s) served.
- (5) State the full names and addresses of all the parties to whom the documents were mailed or hand-delivered. If a party is represented by an attorney, they must be served on the attorney, and you must indicate which party the attorney is representing.
- (6) List any documents that were filed with your application and served on the other parties that are not already listed. For example, any additional opinion or findings of fact, motion to waive fees, affidavit of indigency, prisoner account statement, etc.
- (7) The current date.
- (8) The signature of the person who actually served the documents. If you served the documents yourself, then you must sign.
- (9) Type or print legibly the full name, address and telephone number of the person who served the documents.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

_____.

Plaintiff-_____.

COA No. _____

(1)

v

Lower Ct/Tribunal No. _____.

_____.

Defendant-_____.

PROOF OF SERVICE

State of Michigan)

(2)

County of _____)

(3,4)

I affirm that on _____, I _____ one copy of

(5)

the following documents on: , _____.

_____.

Application for Leave to Appeal, Judgment/Order Appealed, Proof of
Service, Register of Actions, Transcript/Statement Regarding Transcript,

(6)

_____.

(7)

Date: _____

(8)

(9)

_____.

Statement Explaining Delay

If you are filing a delayed application for leave to appeal, you must provide a statement explaining the reasons for the delay – i.e., why a claim of appeal or the application was not timely filed.

What you must do:

You may photocopy the form on the facing page, and check the box next to all explanations that apply. If none of the preprinted statements apply, or you have an additional explanation, check the box next to “Other,” and type or print legibly your explanation.

Statement Explaining Delay

This application for leave to appeal is being filed more than 21 days after the circuit court's entry of the judgment/order being appealed because: (Check all the boxes that apply to you.)

- ☐ I did not know I could appeal my decision until recently.
 - ☐ I could not afford the copying cost and postage to file this application until recently.
 - ☐ I could not afford the entry fee, and did not know I could request a waiver of fees until recently.
 - ☐ I did not know how to appeal this decision until recently.
 - ☐ I needed to get help to complete my application.
 - ☐ Other: _____
-

Filing Fees

What you must do:

You must pay the entry or filing fee before the Court of Appeals can review your application for leave to appeal. **MCR 7.205(B)(7)** It is currently \$375. You may pay the fee by providing a check or money order in that amount, made payable to “Court of Appeals.”

If you are indigent and cannot afford the fee, you may file a motion to waive fees instead. **MCR 7.202(3)** The Court of Appeals may grant the motion so that you will not have to pay any filing fee, or it may deny your motion and require that you pay all or just a portion of the filing fee. See the Motion to Waive Fees section on pages 153 - 159 of this manual for directions and forms to file a motion to waive fees.

End of the application for leave to appeal section.

Docketing Statement and Appellant's Brief

The documents described on the previous pages will initiate your application for leave to appeal with the Court of Appeals. If your application is granted, you will also need to file a docketing statement and an appellant's brief, outlining the issues in your case that you want the Court of Appeals judges to review and decide.

Docketing Statement

WHEN/WHERE/HOW Must you File the Docketing Statement?

If your appeal arises solely from a summary disposition order, you do not need to file a docketing statement. Otherwise, you must file a copy of the docketing statement within 28 days after the order granting your application for leave to appeal is entered. **MCR 7.205(D)(3)** The form for the docketing statement is on pages 161 - 163 of this manual. You must fill it out as completely as possible, and send it to the same place that you mailed the application. Refer to page 92 for details regarding filing.

Appellant's Brief

WHEN Must you File the Brief?

If this appeal arises solely from a summary disposition order, your appellant's brief is due 28 days after the order granting the application has been entered or as otherwise ordered by the Court.

If this is a child custody or termination of parental rights case, your appellant's brief is due 28 days after the order granting leave to appeal has been entered, or the timely ordered transcripts have been filed with the circuit court, whichever is later. **MCR 7.212(A)(1)(a)**

In all other cases, your appellant's brief is due 56 days after the order granting leave to appeal has been entered, or the timely ordered transcripts have been filed with the circuit court, whichever is later. **MCR 7.212(A)(1)(a)**

WHERE Must you File the Brief?

You may file your brief in the same place that you filed your application for leave to appeal. Refer to page 92 for details regarding filing.

HOW Must you File the Brief?

You must file five (5) copies of your brief, which must have the following general format characteristics: **MCR 7.212(B)**

1. At least 1” margins on the top, bottom, and both sides.
2. Printed legibly or typed in not smaller than 12-point type.
3. Double-spaced. Footnotes and quotations can be single-spaced.
4. No more than 50 pages (35 in summary disposition cases), not counting indexes and appendices. The pages must be numbered consecutively. You may number the pages of the indexes at the beginning of the brief in small roman numerals (i.e. i, ii, iii, etc.) and then begin the numbers of the remainder of the brief, starting with the Statement of Facts, in Arabic numbers (i.e. 1, 2, 3, etc.).

There are several sections necessary in a brief. The first is:

Brief Cover Page

What you must do:

You may photocopy the form on the facing page and simply type or print legibly the following information in the **shaded** areas provided.

- (1) The caption as it appears on your application, except that now you should also fill in the Court of Appeals case number.
- (2) Check whether or not you are requesting oral argument. If you are incarcerated, it is not likely that you will be able to appear and argue, so you would not request it.
- (3) Although not required, it is worthwhile to put your name and address on the cover page.

MCR 7.212(C)(1)

You may just copy the subsequent sections necessary in the brief from your application for leave to appeal that you filed earlier. If you wish to rewrite it, follow the instructions beginning on page 113.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

_____,

Plaintiff-Appellee,

COA No. _____.

(1)

v

Lower Ct/Tribunal No. _____.

_____,

Defendant-Appellant.

(2)

ORAL ARGUMENT

☐ REQUESTED

☐ NOT REQUESTED

APPELLANT’S BRIEF

(3)

This page is blank.

Appeals from Civil Judgments/Orders

**Brief &
Application for Leave to Appeal
Form**

Table of Contents Section

What you must do:

You must provide a table of contents listing the section headings of the brief or application, and citing the page number(s) where each is located. **MCR 7.212(C)(2)** You may photocopy the form on the facing page and simply type or print legibly the information required in the **shaded** areas as described below.

Each of the individual sections is explained in detail on the following pages. Once you have completed your brief or application, you must fill in the page numbers where each section starts.

Each argument you list should correspond to a question in your “Statement of Questions Involved” in order of presentation. **MCR 7.212(C)(2)** That is, Argument I should correspond with Question I, and they should be discussed first in the full argument section.

Under Statement of Argument, write the principal point of your argument. It should be only one or two sentences long. Then note the page number where your full argument is presented.

Example:

If your first question in your Statement of Questions Involved is as follows:

- I. WHETHER THE TRIAL COURT ERRED IN GRANTING DEFENDANT SUMMARY DISPOSITION BECAUSE THE STATUTE OF LIMITATIONS HAD RUN.

Your first statement of argument might be something like:

THE TRIAL COURT ERRED IN GRANTING DEFENDANT SUMMARY DISPOSITION BASED ON THE STATUTE OF LIMITATIONS, BECAUSE APPLICATION OF THE DISCOVERY RULE MAKES THE FILING OF THIS CASE TIMELY.

Repeat the argument structure shown if there are additional arguments.

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Statement of Argument:
.....	
Relief Requested

Index of Authorities Section

What you must do:

You must list, in alphabetical order, all cases cited. Each case must have the complete citation, including the year of decision. You must list all the pages on which the case citation appears. **MCR 7.212(C)(3)**

You must also list all other authorities that you cite. This would include statutes (including parallel citations), legal encyclopedias, Law Review articles, etc. **MCR 7.212(C)(3)**

You may photocopy the form on the facing page and simply type or print legibly the citations and page numbers. Use additional pages as needed.

INDEX OF AUTHORITIES

Page Nos.

Cases:

.
---	-------	---

Statutes:

Other:

Statement of Jurisdiction Section

What you must do:

You must provide the Court of Appeals with sufficient information to show that it has jurisdiction over (i. e. the legal authority to review) your appeal. **MCR 7.212(C)(4)**

You may photocopy the form on the facing page and simply type or print legibly the following information in the **shaded** areas provided. **MCR 7.212(C)(4)(a)**

- (1) If you filed a claim, write “7.203(A).” If you filed/are filing a timely application, write “7.205(A).” If you filed/are filing a delayed application, write “7.205(F).”
MCR 7.212(C)(4)(a)
- (2) The date of the judgment or order you are appealing. **MCR 7.212(C)(4)(a)(i)**
- (3) If you filed a motion for new trial, reconsideration, or other postjudgment relief in the lower court or tribunal, state the date on which you filed the motion and the date of the entry of the order deciding the motion. **MCR 7.212(C)(4)(a)(ii)**
- (4) The date you filed the claim or application. **MCR 7.212(C)(4)(a)(iv)**

STATEMENT OF JURISDICTION

- (1) The Court of Appeals has jurisdiction over this appeal under MCR . . . , based on the following information.
- (2) The judgment or order being appealed was entered on
- (3) I filed a motion for postjudgment relief on The order denying that motion was entered on
- (4) I filed this appeal on

Statement of Questions Involved Section

What you must do:

You must concisely state the issues or questions you want the judges of the Court of Appeals to consider in reviewing your appeal, and note the page number on which your corresponding argument begins. Each question must be stated and numbered separately, and be followed by the circuit court's and your answer to the question. The answer(s) to the questions should usually be "Yes" or "No." **MCR 7.212(C)(5)**

Examples of questions might be:

- I. WHETHER THE TRIAL COURT ERRED IN ADMITTING EVIDENCE OF DEFENDANT'S UNFAITHFULNESS DURING THE MARRIAGE, AND CONSIDERING FAULT IN DIVIDING THE MARITAL PROPERTY.

The trial court answers: Yes

Appellant answers: No

- II. WHETHER THE CIRCUIT COURT ERRED IN AFFIRMING THE DEPARTMENT OF CORRECTIONS' DECISION THAT PLAINTIFF'S CONDUCT CONSTITUTED MAJOR MISCONDUCT.

The trial court answers: No

Appellant answers: Yes

You may photocopy the form on the facing page and simply type or print legibly your statement of questions in the **shaded** areas. Continue adding to the question numbers as needed. Use additional pages as needed. [However, it is suggested that you concisely raise only genuine issues. Mere volume does not help you win an appeal.]

Statement of Facts Section

What you must do:

You must explain the facts relevant to your appeal in a clear, concise and chronological statement. You must fairly state all the material facts, even when they are not favorable to you. You must also show the Court of Appeals where in the lower court or tribunal record this fact came from. For example, you must cite a specific page of a transcript, or note some other document which is part of the lower court or tribunal record. You must describe:

1. The nature of the action. You would state that this is a civil case, and note the subject matter, such as administrative agency decision, divorce, money judgment, slip and fall, etc.
2. The character of the pleadings and proceedings. This would include whether there was a jury trial, bench trial, or summary disposition, and the dates of all proceedings.
3. The substance of proof. This would include a description of the witnesses' testimony at trial, any deposition testimony, the content of a contract that is in dispute in this action, reason for the divorce, etc.
4. The dates of important documents and events.
5. The material rulings and orders that the trial court or administrative agency issued.
6. The verdict or judgment.
7. Anything else necessary to an understanding of the questions involved.

MCR 7.212(C)(6)

You may photocopy the form on the facing page and type or print legibly your concise statement of facts. Use additional pages as needed.

STATEMENT OF FACTS

Arguments Section

This is the portion of the brief in which you provide your thorough, but concise, legal analysis, and try to persuade the Court of Appeals judges of your position. The argument section must be formatted as described below. **MCR7.212(C)(7)**

What you must do:

You may photocopy the form on the facing page and type or print legibly the following information in the **shaded** areas provided.

- (1) You must state the principal point of your argument in **CAPITAL** or **boldface** lettering at the top of each argument. You may simply copy the principal point from your Table of Contents if you wish.
- (2) **Standard of Review.** The Court of Appeals' review of an appeal is limited by the legal standard imposed on it. Your legal research will need to include what that standard is for each issue. Many trial issues, such as whether the trial court should have admitted certain evidence, are reviewable under the "abuse of discretion" standard. Here is an example of how that standard can be stated:

The decision whether to admit or exclude evidence is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *Chmielewski v Xermac Inc*, 457 Mich 593, 613-614 (1998). An appellate court will find an abuse of discretion if the trial court's decision was so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment or an exercise of passion or bias. *Dacon v Transue*, 441 Mich 315, 329 (1992).

However, there are other standards applicable to other situations, such as the standards of review for findings of fact, administrative agencies, custody matters, etc.

- (3) **Preservation of Error.** Give the page reference to the transcript of other documents to show where the issue was preserved for appeal: that is, where it was discussed in the proceedings or documents filed in the circuit court.
- (4) **Analysis.** Thoroughly, but concisely, cite and explain the applicable law for the issue involved, show how it applies to the facts of this case, and explain why it should lead the judges to conclude that you are entitled to relief.

Use additional pages as needed.

ARGUMENTS

I.

(1)

[Redacted text area]

Standard of Review:

(2)

[Redacted text area]

Preservation of Error:

(2)

[Redacted text area]

Analysis:

(3)

[Redacted text area]

**Relief Requested Section
And Signature**

What you must do:

- (1) You must provide a concluding paragraph that explains to the Court of Appeals judges what you want them to do. **MCR 7.212(C)(8)** Examples of relief you might request are:

Based on the analysis in this brief, plaintiff-appellant requests this Court to reverse the grant of summary disposition in favor of defendant-appellee, and remand to the circuit court for further proceedings.

Based on the above analysis, defendant-appellant requests this Court to reverse the judgment of \$1,000,000 against him, and remand to the circuit court for a new trial on damages.

- (2) You must also sign the brief or application. **MCR 7.212(C)(9)**

You may photocopy the form on the facing page and type or print legibly the relief you request and sign your name in the shaded areas provided.

RELIEF REQUESTED

(1)

[Redacted area]

(2)

[Redacted area]

This page is blank.

Original Actions

Original Actions

This section will address three (3) types of original actions that can be filed directly in the Court of Appeals. **MCR 7.203(C)** If you wish to file a different original action or extraordinary writ, refer to the court rules and use the following instructions and forms as a guide.

1. A **Complaint for Superintending Control** is generally used to request the Court of Appeals to order the court or tribunal directly below it to act. For example, if the trial court refused to rule on a motion or decide a case, you could ask this Court to order the trial court to act. **NOTE:** You would have to be a party in the case below. You could not file this complaint on behalf of a spouse, other relative or friend.
2. A **Complaint for Mandamus** is generally used to compel a state official to perform a clear legal duty that is ministerial in nature, i.e. it does not involve the exercise of discretion.
3. A **Complaint for Habeas Corpus** is generally used to request the Court to order the release of a person from unlawful imprisonment.

These are all requests for extraordinary remedies. They are generally not available if you have access to a remedy by appeal. There are many other limitations which are too lengthy to go into in this manual. You will need to study the court rules and other law to determine whether you qualify.

WHERE Must You File Your Complaint?

You must file your complaint by mail or in person (no faxes) at one of the four (4) clerk's offices in this state. **MCR 7.201(B)(2)** The addresses for those offices are listed on page i of this manual.

NOTE: Your complaint is not "filed" until it has been received by a clerk of the Court of Appeals. **MCR 7.202(2) & (4)** That means that if you mail your documents, they are not yet "filed" when you place them in the mailbox. They are filed when they reach the Court of Appeals. The clerk's office will stamp all the documents it receives with the date and time of their arrival.

HOW Must You File Your Complaint?

You must file the following documents to correctly submit an original complaint:

1. Five (5) copies of a complaint, one signed, with any supporting documents attached. **MCR 7.206(D)(1)(a)**
2. Five (5) copies of a supporting brief, one signed. **MCR 7.206(D)(1)(b)**
3. A proof of service stating that you have provided all other parties in the case with a copy of the complaint and all other documents filed with it. **MCR 7.206(D)(1)(c)**
4. A check or money order for \$375 to cover the entry fee. **MCR 7.206(D)(1)(d)** If you cannot afford to pay the entry fee, then you must file a motion to waive fees, along with an affidavit of indigency and, if you are incarcerated, a prisoner account statement for the past 12 months. **MCR 7.202(3)**

Complaint for an Original Action

What you must do:

You may photocopy the form on the facing page and simply type or print legibly the following information in the shaded areas provided. **NOTE:** Leave the COA No. line blank. The Court of Appeals will assign that number.

- (1) Your full name.
- (2) If this is a complaint for superintending control, state the lower court or administrative agency case number. If not, leave it blank.
- (3) The name(s) of the defendant(s).
- (4) Check the appropriate box indicating which type of original action you are filing.
- (5) Your name as it appears in the caption.
- (6) The name of the person, court or administrative agency you are requesting the Court of Appeals to order to act.
- (7) State what you want the Court of Appeals to order the named entity to do.
- (8) The current date.
- (9) Your signature.
- (10) Type or print legibly your full name, address and telephone number. If you are incarcerated, this would include your prisoner number and the name and address of the facility where you are living. [Incarcerated persons must place their prisoner number on all documents filed in this Court so that return correspondence will be routed back to them properly.]

STATE OF MICHIGAN
IN THE COURT OF APPEALS

(1) . ,

Plaintiff,

COA No. _____

(2) v

Lower Ct/Tribunal No. .

(3) . ,

Defendant(s).

☐ SUPERINTENDING CONTROL

(4) COMPLAINT FOR:

☐ MANDAMUS

☐ HABEAS CORPUS

(5) . , plaintiff, requests that the Court of Appeals order
(6) . ,to act in the following manner:

(7) .
.
.
.
.
.

(8) Date: .

(9) .

(10) .
.
.
.
.

Brief in Support of Original Complaint

The brief in support of your original complaint must have the following general format characteristics: **MCR 7.212(B)**

1. At least 1” margins on the top, bottom, and both sides.
2. Printed legibly or typed in not smaller than 12-point type.
3. Double-spaced. Footnotes and quotations can be single-spaced.
4. The complaint and brief together must be no more than 50 pages, not counting indexes and appendices. The pages must be numbered consecutively. You may number the pages of the indexes at the beginning of the brief in small roman numerals (i.e. i, ii, iii, etc.) and then begin the numbers of the remainder of the brief, starting with the Statement of Facts, in Arabic numbers (i.e. 1, 2, 3, etc.).

Cover Page

What you must do:

You may photocopy the form on the facing page and simply type or print legibly the following information in the **shaded** areas provided.

- (1) The caption as it appears on your complaint.
- (2) Although not required, it is worthwhile to put your name and address on the cover page.

MCR 7.212(C)(1)

STATE OF MICHIGAN
IN THE COURT OF APPEALS

_____,

Plaintiff,

COA No. _____

(1)

v

Lower Ct/Tribunal No. _____.

_____,

Defendant(s).

BRIEF IN SUPPORT OF ORIGINAL COMPLAINT

(2)

Table of Contents Section

What you must do:

You must provide a table of contents listing the section headings of the brief, and citing the page number(s) where each is located. **MCR 7.212(C)(2)** You may photocopy the form on the facing page and simply type or print legibly the information required in the shaded areas as described below.

Each of the individual sections is explained in detail on the following pages. Once you have completed your brief, you must fill in the page numbers where each section starts.

Each argument you list should correspond to a question in your “Statement of Questions Involved” in order of presentation. **MCR 7.212(C)(2)** That is, Argument I should correspond with Question I, and they should be discussed first in the full argument section of the brief.

Under Statement of Argument, write the principal point of your argument. It should be only one or two sentences long. Then note the page number where your full argument is presented.

Example:

Presume your first question in your Statement of Questions Involved is as follows:

- I. WHETHER THE COURT OF APPEALS SHOULD EXERCISE SUPERINTENDING CONTROL OVER JUDGE SMITH AND ORDER HIM TO RULE ON THE PETITION PLAINTIFF FILED TWO (2) YEARS AGO.

Your statement of argument might be something like:

THE COURT OF APPEALS SHOULD EXERCISE SUPERINTENDING CONTROL OVER JUDGE SMITH AND ORDER HIM TO ENTER AN ORDER DECIDING THE PETITION FILED TWO (2) YEARS AGO.

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.....	
Relief Requested

Index of Authorities Section

What you must do:

You must list, in alphabetical order, all cases cited in this brief. Each case must have the complete citation, including the year of decision. You must list all the pages on which the case citation appears. **MCR 7.212(C)(3)**

You must also list all other authorities that you cite in this brief. This would include state statutes (including parallel citations), legal encyclopedias, Law Review articles, etc. **MCR 7.212(C)(3)**

You may photocopy the form on the facing page and simply type or print legibly the citations and page numbers in your brief. Use additional pages as needed.

INDEX OF AUTHORITIES

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Cases:

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Statutes:

Other:

Statement of Jurisdiction Section**What you must do:**

You must provide the Court of Appeals with sufficient information to show that it has jurisdiction over (i. e. the legal authority to review) your appeal. **MCR 7.212(C)(4)**

You may photocopy the form on the facing page and check the following information in the **shaded** areas. **MCR 7.212(C)(4)(a)**

- (1)** Check the box next to the type of original complaint your are filing. **MCR 7.212(C)(4)(a)**

STATEMENT OF JURISDICTION

(1) The Court of Appeals has jurisdiction over this complaint based on:

- MCR 7.203(C) ☐ (1) superintending control
☐ (2) mandamus
☐ (3) habeas corpus

Statement of Questions Involved Section**What you must do:**

You must concisely state the issues or questions you want the judges of the Court of Appeals to consider in reviewing your complaint, and note the page number on which your corresponding argument begins. Each question must be stated and numbered separately, and be followed by the circuit court's (if applicable) and your answer to the question. The answer(s) to the questions should usually be "Yes" or "No." **MCR 7.212(C)(5)**

Examples of questions might be:

- I. WHETHER THE COURT OF APPEALS SHOULD EXERCISE SUPERINTENDING CONTROL OVER JUDGE SMITH AND ORDER HIM TO RULE ON THE PETITION PLAINTIFF FILED TWO (2) YEARS AGO.

The trial court answers: No

Appellant answers: Yes

- II. WHETHER PLAINTIFF IS BEING ILLEGALLY DETAINED AND SHOULD BE RELEASED FROM PRISON.

Appellant answers: Yes

You may photocopy the form on the facing page and simply type or print legibly your statement of questions in the **shaded** areas. Continue adding to the question numbers as needed. Use additional pages as needed. [However, it is suggested that you concisely raise only genuine issues. Mere volume does not help you win an appeal.]

STATEMENT OF QUESTIONS INVOLVED

Page No.

I.

• • • • •

•

The trial court or tribunal answers:

Appellant answers:

II.

• • • • •

•

The trial court or tribunal answers:

Appellant answers:

Statement of Facts Section

What you must do:

You must explain the facts relevant to your original action in a clear, concise and chronological statement. You must fairly state all the material facts, even when they are not favorable to you. You must also cite to any transcript or document which supports your statement of facts. You must describe:

1. The nature of the action. State whether it is a complaint for superintending control, mandamus or habeas corpus.
2. The character of the pleadings and proceedings. If it is a complaint for superintending control, describe the pleadings and proceedings that took place below.
3. The substance of proof. This would include a description of the witnesses' testimony, the content of any relevant document, etc.
4. The dates of important documents and events.
5. The material rulings and orders that the trial court or administrative agency issued.
6. The verdict or judgment.
7. Anything else necessary to an understanding of the questions involved.

MCR 7.212(C)(6)

You may photocopy the form on the facing page and type or print legibly your concise statement of facts. Use additional pages as needed.

STATEMENT OF FACTS

Arguments Section

This is the portion of the brief in which you provide your thorough, but concise, legal analysis, and try to persuade the Court of Appeals judges of your position. The argument section must be formatted as described below. **MCR7.212(C)(7)**

What you must do:

You may photocopy the form on the facing page and type or print legibly the following information in the **shaded** areas provided. Use additional pages as needed.

- (1) You must state the principal point of your argument in CAPITAL or **boldface** lettering at the top of each argument. You may simply copy the principal point from your Table of Contents if you wish.
- (2) Standard of Review. The Court of Appeals' review of a question is limited by the legal standard imposed on it. Your legal research will need to include what that standard is for each issue. Many questions in original actions are questions of law. This is how that standard could be stated:

A question of law is reviewed de novo. *In Re Jude*, 228 Mich App 667 (1998).

However, other standards may be applicable, depending on the issues raised.

- (3) Analysis. Thoroughly, but concisely, cite and explain the applicable law for the issue involved, show how it applies to the facts of this case, and explain why it should lead the judges to conclude that you are entitled to relief.

Use additional pages as needed.

ARGUMENTS

I. [Redacted]

(1)

Standard of Review: [Redacted]

(2)

Analysis: [Redacted]

(3)

**Relief Requested Section
And Signature**

What you must do:

- (1) You must provide a concluding paragraph that explains to the Court of Appeals judges what you want them to do. **MCR 7.212(C)(8)** An example of relief you might request is:

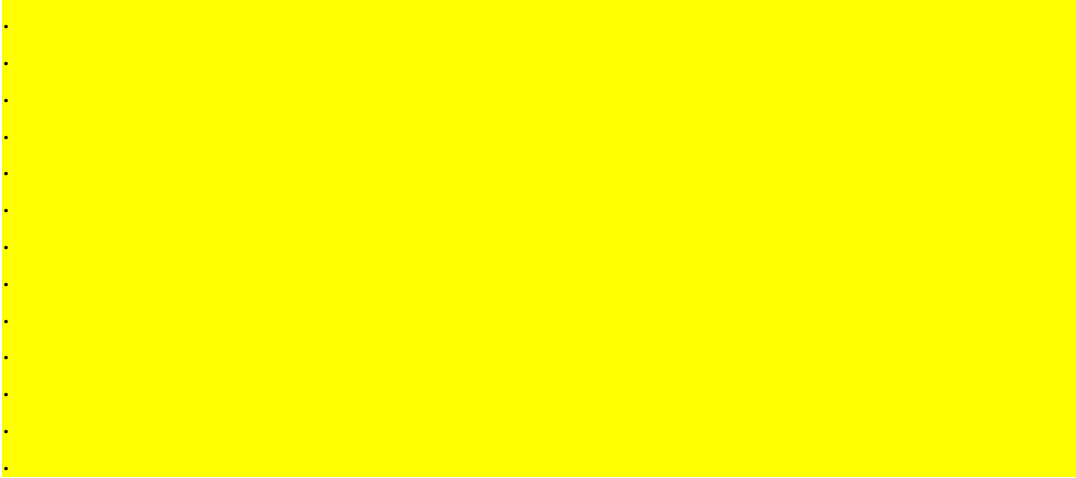
Based on the analysis in this brief, plaintiff requests this Court to order the warden of the prison to release him immediately.

- (2) You must also sign the brief. **MCR 7.212(C)(9)**

You may photocopy the form on the facing page and type or print legibly the relief you request and sign your name in the shaded areas provided.

RELIEF REQUESTED

(1)



(2)



Proof of Service

You must serve (mail or hand deliver) one copy of the complaint and all the attached documents on all other parties in your case. You must then provide proof of that service to the Court of Appeals. **MCR 7.204(C)(3)**

What you must do:

You may photocopy the form on the facing page and type or print legibly the following information in the **shaded** areas provided.

- (1) The caption as it appears on your complaint.
- (2) The county in which the person who actually served these documents was located. For example, if you mailed these documents from your home, you would put the county in which your home is located.
- (3) In the first shaded area on the line, enter the date on which the documents were served.
- (4) In the second shaded area on the line, state how the documents were served: put the word “mailed” if they were sent in the mail, or put the word “hand-delivered” if they were personally handed to the person(s) served.
- (5) State the full names and addresses of all the parties to whom the documents were mailed or hand-delivered.
- (6) Name the type of original complaint you are filing: i.e. superintending control, mandamus or habeas corpus.
- (7) List any documents which were filed with your complaint and served on the other parties that are not already listed. For example, motion to waive fees, affidavit of indigency, prisoner account statement, etc.
- (8) The current date.
- (9) The signature of the person who actually served the documents. If you served the documents yourself, then you must sign.
- (10) Type or print legibly the full name, address and telephone number of the person who served the documents.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

_____,

Plaintiff-_____, COA No. _____

(1) v Lower Ct/Tribunal No. _____

_____,

Defendant-_____.

PROOF OF SERVICE

State of Michigan)

(2) County of _____)

(3,4) I affirm that on _____, I _____ one copy of

(5) the following documents on: , _____.

_____.

(6) Complaint for _____, Brief in Support, Proof of
Service, _____.

(7) _____.

(8) Date: _____

(9) _____

(10) _____.

Filing Fees

What you must do:

You must pay the entry or filing fee before the Court of Appeals can review your original complaint. **MCR 7.205(B)(7)** It is currently \$375. You may pay the fee by providing a check or money order in that amount, made payable to “Court of Appeals.”

If you are indigent and cannot afford the fee, you may file a motion to waive fees instead. **MCR 7.202(3)** The Court of Appeals may grant the motion so that you will not have to pay any filing fee, or it may deny your motion and require that you pay all or just a portion of the filing fee. See the Motion to Waive Fees section on pages 153 - 159 of this manual for directions and forms to file a motion to waive fees.

Motion to Waive Fees

Motion to Waive Fees

If you are indigent and cannot afford the filing fee, you may file a motion to waive fees. **MCR 7.202(3)** To support your request to waive fees, you must also provide an affidavit of indigency. In addition, if you are incarcerated, you must file a prisoner account statement for the past 12 months. Examples of these documents are on the following pages.

What you must do:

A form for a motion to waive fees is on the facing page. You may photocopy it and simply type or print legibly the following information in the **shaded** areas provided.

- (1) The caption as it appears on your claim of appeal, application for leave to appeal or original complaint.
- (2) Your name as it appears in the caption.
- (3) The current date.
- (4) Your signature.
- (5) Type or print legibly your full name, address and telephone number. **MCR 7.204(D)(2)** If you are incarcerated, this would include your prisoner number and the name and address of the facility where you are living.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

_____,

_____.

COA No. _____

(1)

v

Circuit Ct. No. _____.

_____,

_____.

MOTION TO WAIVE FEES

(2)

_____, requests that the Court of Appeals

waive the filing fees for this case because I cannot afford to pay them.

(3)

Date: _____

(4)

(5)

Affidavit of Indigency

Along with your motion to waive fees, you must provide an affidavit stating the facts that you believe will show the Court of Appeals that you cannot afford the filing fee. You may photocopy the form on the facing page and simply type or print legibly the following information in the shaded areas provided:

- (1) Your full name.
- (2) Your current address. If you are incarcerated, include your prisoner number and the name of the facility where you are living.
- (3) If you are incarcerated, check the box and go to item (5) below.
- (4) Fill in amounts truthfully as to your income, list and worth of assets, list and amount of liabilities (i.e. debts), list and amount of expenses, and the type of public assistance, if any, you receive.
- (5) The current date.
- (6) Your signature.

Prisoner Account Statement

If you are incarcerated, you must provide a prisoner account statement with your motion to waive fees and affidavit of indigency. You can obtain this document from the accounting office of the facility where you are living. The front page generally looks like the document on the facing page, followed by several pages showing the transactions to and from your prisoner account over the past 12 months.

STATE OF MICHIGAN - CIVIL ACTION

**CERTIFICATE OF PRISONER ACCOUNT ACTIVITY
AND AFFIDAVIT REGARDING SUSPENSION OF PRISONER FEES/COSTS**

Prisoner-Plaintiff/Petitioner/Appellant name and number <div style="background-color: black; width: 100px; height: 15px; margin: 5px auto;"></div>	V	Defendant's/Respondent's/Appellee's name <div style="background-color: black; width: 100px; height: 15px; margin: 5px auto;"></div>
---	---	--

CERTIFICATE OF PRISONER ACCOUNT ACTIVITY

I am employed by the Michigan Department of Corrections at the facility identified below, at which the prisoner identified as the Plaintiff/Petitioner/Appellant is currently incarcerated.

Attached is a computer printout which accurately reflects the current spendable balance and all activity within this prisoner's account during the preceding twelve months or, if the prisoner has been incarcerated for less than twelve months, for the period of incarceration. Code "C" on the printout represents a withdrawal from the account and code "D" represents a deposit to the account. The attached printout reflects, for the reported period, an average monthly account deposit (i.e., total deposits divided by number of months) of \$11.55, an average monthly account balance (i.e., total deposits minus total withdrawals divided by number of months) of \$0.12. There is a current spendable account balance of \$6.04.

Date: 06/16/99

Don Truitt / Assistant Business Manager
 Signature/Title
Ionia Maximum Correctional Facility
 Correctional Facility

RECEIVED
 JUNE 18 1999
 CHIEF CLERK
 COURT OF APPEALS
 5

Note: Bottom section to be completed by prisoner and sent by prisoner to a Michigan court along with State civil pleading/claim of appeal.

AFFIDAVIT REGARDING SUSPENSION OF PRISONER FEES/COSTS

1. I am the Plaintiff/Respondent/Appellant in the attached pleading/petition/claim of appeal.
2. I am asking the court for suspension of filing fees and costs because I am indigent as reflected in the Certificate of Prisoner Account Activity and attached computer printout.

Ce
 Prisoner's Signature

Subscribed and sworn to before me, a Notary Public,
 this 23rd day of June, 1999.
Gerald G

CSJ-276 6/97
4835-3276

My Commission Expires:

GERALD G, Notary Public
 Ingham County, Michigan
 "Acting in Ionia County"
 My Commission Expires January 20, 2003

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Docketing Statement

Michigan Court of Appeals

DOCKETING STATEMENT

Case No:
Circuit:
Court of Appeals:

Please read before completing form.

- MCR 7.204(H) and 7.205(D)(3) require an **appellant** in a civil action to complete and file a docketing statement within 28 days after the claim of appeal is filed or the application for leave to appeal is granted. Failure to timely file this document may lead to dismissal of the appeal. An appellee may respond by filing a separate docketing statement.
- This document will be used to screen the appeal for suitability and eligibility for the settlement conference program, and will be used to help resolve jurisdictional and transcript issues. It is important that you complete this form accurately and legibly.
- The issues identified in the docketing statement do not limit appellant's presentation of the issues in appellant's brief. Omission of an issue in the docketing statement will not provide a basis for a motion to strike appellant's brief.

1. Case Name:

☐ Appellant
☐ Appellee

v

☐ Appellant
☐ Appellee

Name of first Plaintiff	
Address:	
Telephone No:	
Attorney Name:	Bar No: _____
Address:	
Telephone No:	

Name of first Defendant	
Address:	
Telephone No:	
Attorney Name:	Bar No: _____
Address:	
Telephone No:	

2. ☐ A bankruptcy or other proceeding has been filed which affects this Court's jurisdiction over this appeal.

Identify and explain.

3. ☐ There are pending or prior appeals in the Court of Appeals or Supreme Court which arose out of the same transaction, lower court case, or between the same parties.

Specify case name, lower court number, appellate court number(s), and citation, if available.

4. ☐ I am aware of the following pending appeals in the Court of Appeals or Supreme Court raising the same or closely related issues.

Specify case name, lower court number, appellate court number(s), and citation, if available.

5. Identify **all** the lower court hearings.

Type of proceeding (i.e. motion, trial, etc.)	Date(s) Occurred	Court Reporter

6. **Nature of case:**

- a. If the lower court case number provided on page 1 does not include a suffix, please specify the circuit court case code (i.e. NI, CK, etc): _____.
- b. Identify the procedural nature of the case being appealed.
- ☐ arbitration ☐ bench trial ☐ post-judgment action ☐ declaratory judgment
- ☐ interlocutory matter ☐ jury trial ☐ summary disposition
- ☐ administrative proceeding (specify agency) _____
- ☐ other (i.e. default judgment) _____

7. Briefly describe the nature of the action and the result in the trial court. **Conclusory statements** such as "the judgment of the trial court is not supported by law" are unacceptable. **Attach additional pages as needed.**

8. Briefly state the issues to be raised in this appeal. **Attach additional pages as needed.**

9. The amount and terms of the judgment appealed are: _____

10. Settlement negotiations. (Check all boxes that apply.)

- ☐ Settlement negotiations have been conducted or are scheduled.
- ☐ Settlement is unlikely.
- ☐ Other _____

11. **Proof of Service:** I certify that a copy of this document and all attachments were served on all counsel of record or pro per parties by regular mail at their last known addresses.

Date of Service

Signature

This page is blank.

Glossary of Terms

Appeal: A request made to a higher court for review of a the lower court's or administrative tribunal's decision to determine if it was correct. The party that appeals is called the "appellant," the other party is the "appellee."

Application for leave to appeal: A request to a court to grant an appeal when the requesting party does not have an automatic right to an appeal.

Brief: A written document submitted by a party to an appeal that states the facts of the case, sets out the applicable law, and explains why the court should decide the case in that party's favor.

Clerk of the court: An officer of the court in charge of managing the flow of cases through the court, maintaining court records and providing other administrative support to the court and judges.

Claim of appeal: An appeal that a party has a right to file and have the judges review and decide. The right is given by statute or court rule.

Complaint: A document which initiates an original action.

Court rule: The procedural rules that govern how an appeal or original action can be filed and conducted. The Michigan Court Rules (MCR) 7.201 - 7.219 govern actions in the Court of Appeals.

Docket Entries: See "**Register of Actions.**"

Jurisdiction: The legal authority of a court to hear and decide a case.

Motion: A request by a party to the court for a decision on an issue relating to the appeal. An example would be a motion to waive fees.

Opinion: A court's written explanation of its decision.

Order: A short written decision by a court.

Oral argument: A hearing in front of the panel of judges assigned to a case, that allows the parties or their attorneys to summarize their positions and answer any questions regarding the case.

Original action: A case initiated or originated in a court. Even though the Court of Appeals is generally a Court where appeals are filed, there are certain actions which can be originated in it.

Panel: A group of judges assigned to decide the case. In the Court of Appeals, judges generally sit in panels of three.

Party: A litigant in a case. In an appeal, a party is usually referred to as appellant or appellee.

Pleadings: Documents filed in a court which outline a party's position. Claims of appeal, applications for leave to appeal and complaints are all pleadings.

Pro Per: A abbreviated version of the Latin phrase "in propria persona," meaning "on one's own behalf." Pro per refers to a party who presents his/her own case without an attorney.

Record: The written account of the proceedings in a case, including pleadings, transcripts of testimony and exhibits.

Register of Actions: A chronological list created by a court detailing all of the actions that occurred in a case. This is also known as "Docket Entries."

Transcript: A written, word-for-word record of what was said in a proceeding.

DIAGRAM OF BASIC APPEAL PROCESS

IN COURT OF APPEALS

